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Contents

Federal Register

Vol. 63, No. 96

Tuesday, May 19, 1998

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 63, No. 96
Tuesday, May 19, 1998

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–056–12]

Mediterranean Fruit Fly; Addition to Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Lake and Marion Counties, FL, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the continental United States.

DATES: Interim rule effective May 13, 1998. Consideration will be given only to comments received on or before July 20, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–056–12, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–056–12. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: mstefan@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States.

Recent trapping surveys by inspectors of Florida State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of Medfly has occurred in a portion of Lake and Marion Counties, FL.

The regulations in 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles, and the designation of less than the entire State as a quarantined area will prevent the interstate spread of the Medfly. The boundary lines for a portion of a State being designated as quarantined are set up approximately four-and-one-half miles from the detection sites. The boundary lines may vary due to factors such as the location of Medfly host material, the location of transportation centers such as bus stations and airports, the patterns of persons moving in that State, the number and patterns of distribution of the Medfly, and the use of clearly identifiable lines for the boundaries.

In accordance with these criteria and the recent Medfly findings described above, we are amending 301.78–3 by adding a portion of Lake and Marion Counties, FL, to the list of quarantined areas. The new quarantined area is described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Medfly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by adding a portion of Lake and Marion Counties, FL, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Medfly into noninfested areas of the United States.

This interim rule affects the interstate movement of regulated articles from the quarantined area of Lake and Marion Counties, FL. We estimate that there are 85 entities in the quarantined area of Lake and Marion Counties, FL, that sell, process, handle, or move regulated articles; this estimate includes 15

commercial growers, 1 transportation terminal, 8 fruit stands, 5 flea markets, 5 processing plants, 1 farmer's market, 25 nurseries, 10 apiaries, 12 mobile vendors, and 3 food stores. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 85 entities are small in size, since the overwhelming majority of businesses in Florida, as well as the rest of the United States, are small entities by SBA standards.

We believe that few, if any, of the 85 entities will be significantly affected by the quarantine action taken in this interim rule because few of these types of entities move regulated articles outside the State of Florida during the normal course of their business. Nor do consumers of products purchased from these types of entities generally move those products interstate. The effect on the small entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow those small entities to move regulated articles interstate with very little additional costs. Also, many of these types of small entities sell other items in addition to regulated articles, so the effect, if any, of the interim rule should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The site specific environmental assessment and programmatic Medfly environmental impact statement provide a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c), the entry for Florida is amended by adding an entry for Lake and Marion Counties, FL, to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

Florida

* * * * *

Lake and Marion Counties. That portion of Lake and Marion Counties beginning at the intersection of County Road 44A and County Road 439; then west along County Road 44A to Estes Road; then south along Estes Road to Bates Avenue; then west along Bates Avenue to the extension of Bates Avenue; then west along the extension of Bates Avenue to the shoreline of Lake Eustis; then northwest along the northern shoreline of Lake Eustis to Indian Trail; then north along Indian Trail to Grand Island Shores Road; then west along Grand Island Shores Road to Apiary Road; then north along Apiary Road to the extension of Apiary Road; then north along the extension of Apiary Road to Lake Yale; then northwest and north along the shoreline of Lake Yale to the section line dividing sections 7 and 8, T. 18 S., R. 26 E.; then north along the section line dividing sections 7 and 8, and 5 and 6, T. 18 S., R. 26 E., to the Lake/Marion County line; then north along the section line dividing sections 31 and 32, and 29 and 30 to the southern section line of section 20, T. 17 S., R. 26 E.; then east along the section line dividing sections 20 and 29, and 21 and 28, T. 17 S., R. 26 E., to the section line dividing sections 21 and 22, T. 17 S., R. 26 E.; then north along the section line dividing sections 21 and 22, T. 17 S., R. 26 E., to the southern section line of section 15, T. 17 S., R. 26 E.; then east along the section line dividing sections 15 and 22, 14 and 23, and 13 and 24, T. 17 S., R. 26 E., to the Lake/Marion County line; then north along the Lake/Marion County line to the southern section line of section 7, T. 17 S., R. 27 E.; then east along the section line dividing sections 7 and 18, 8 and 17, 9 and 16, 10 and 15, and 11 and 14, T. 17 S., R. 27 E. to the western section line of section 13, T. 17 S., R. 27 E.; then south along the section line dividing sections 13 and 14, 23 and 24, 25 and 26, 35 and 36, T. 17 S., R. 26 E., and sections 1 and 2, 11 and 12, 13 and 14, and 23 and 24, T. 16 S., R. 27 E., to the southern section line of section 23, T. 16 S., R. 27 E.; then west along the section line dividing sections 23 and 26, T. 16 S., R. 27 E., to County Road 439; then south along County Road 439 the point of beginning.

Done in Washington, DC, this 13th day of May 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–13289 Filed 5–18–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service and Executive Office for Immigration Review

8 CFR Parts 3 and 236

[INS No. 1855–97; AG Order No. 2152–98]

RIN 1115–AE88

Procedures for the Detention and Release of Criminal Aliens by the Immigration and Naturalization Service and for Custody Redeterminations by the Executive Office for Immigration Review

AGENCY: Immigration and Naturalization Service, and Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR), establishing a regulatory framework for the detention of criminal aliens pursuant to the Transition Period Custody Rules (TPCR) set forth in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rule is necessary to provide uniform guidance to Service officers and immigration judges (IJs) regarding application of the TPCR.

DATES: This rule is effective June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Brad Glassman, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW., Room 6100, Washington, DC 20536, telephone (202) 305–0846.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1996, the Commissioner of the Immigration and Naturalization Service (Service) notified Congress that the Service lacks the detention space and personnel necessary to comply with the mandatory detention provisions of section 440(c) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104–132, 110 Stat. 1214, and section 236(c) of the Immigration and Nationality Act (INA or Act), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, Div. C, section 303(a), 110 Stat. 3009. By operation of law, *see* IIRIRA section 303(b)(2), the notification resulted in the temporary replacement of these mandatory detention provisions with the Transition Period Custody Rules (TPCR) set forth in IIRIRA section 303(b)(3). A second notification on September 29, 1997, continued the TPCR in effect for an additional year. The TPCR provide for the detention, *inter alia*, of specified classes of criminal aliens, and allow some of these aliens to be considered for release in the exercise of the Attorney General's discretion.

The Department of Justice (Department) published a proposed rule to implement the TPCR on September 15, 1997, at 62 FR 48183, with written comments due by October 15, 1997. The proposed rule established three categories of criminal aliens for purposes of detention and release under the TPCR. Aliens in the first category were subject to mandatory detention. Aliens in the second category were subject to mandatory detention except in the case of lawful permanent resident aliens and certain other lawfully admitted aliens who had remained free of crimes, immigration violations, and the like for a 10-year period. Aliens excepted from the second category and aliens in the third category could be considered for release on a case-by-case basis, in the exercise of discretion.

The proposed rule also established procedures for the Service to obtain a stay of an immigration judge's custody decision in conjunction with an appeal of the custody decision to the Board of Immigration Appeals (Board). In providing explicit authority for the Service to seek an emergency stay, the rule codified a long-standing administrative practice. The rule departed from present practice, however, in providing for an automatic stay in certain criminal cases where the Service appeals the redetermination of a bond set at $10,000 or more (including an outright denial of bond).

The Department has received a number of public comments recommending modifications of the proposed rule. Because several of the comments overlap or endorse the submissions of other commenters, the following discussion will address the comments by topic rather than by response to each comment individually.

General Rules Versus Ad Hoc Adjudication

Several commenters objected to the establishment of categories of non-releasable deportable and inadmissible criminal aliens based on factors strongly indicating a poor bail risk. The commenters expressed a preference for case-by-case custody determinations in all situations, criticizing categorical rules as burdensome with respect to the Service's detention resources, less flexible and nuanced than case-by-case consideration, invasive of immigration judges' bond redetermination authority, contrary to the TPCR, and, in the case of permanent resident aliens, unconstitutional.

The Department has carefully considered the views of the commenters, and will retain the basic structure of the proposed rule, with certain modifications. This rule implements an important component of a congressional and executive policy to ensure the swift and certain removal of aliens who commit serious crimes in this country. The success of this policy, in the estimation of both Congress and the Department, significantly affects the well being of the United States and its law-abiding citizen, residents, and visitors.

Congress' near-complete power over immigration transcends the specific grant of authority in Article 1, Section 8 of the Constitution, and derives from the ''inherent and inalienable right of every sovereign and independent nation'' to determine which aliens it will admit or expel. *Fong Yue Ting* v. *United States*, 149 U.S. 698, 711 (1893); *see also, e.g,. Landon* v. *Plasencia*, 459 U.S. 21, 32 (1982) (''[T]he power to admit or exclude aliens is a sovereign prerogative,''); *Kleindienst* v. *Mandel*, 408 U.S. 753, 766–67 (1972) (' 'Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government.' '' (quoting *Galvan* v. *Press*, 347 U.S. 522, 531 (1954)); *Flemming* v. *Nestor*, 363 U.S. 603, 616 (1960) (describing ''power of Congress to fix the conditions under which aliens are to be permitted to enter and remain in this country'' as ''plenary''); *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 587–88 (1952) (Power to remove even permanent resident aliens is ''confirmed by international law as a power inherent in every sovereign state.''); *Mahler* v. *Eby*, 264 U.S. 32, 39 (1924) (describing as ''unquestioned'' the power of Congress ''to rid the country of persons who have shown by their career that their continued presence here would not make for the safety or welfare of society''). More than a century ago, the Supreme Court upheld detention

> as part of the means necessary to give effect to the provisions for the exclusion of expulsion of aliens * * *. Proceedings to exclude or expel would be in vain if those accused could not be held in custody pending the inquiry into their true character and while arrangements were being made for their deportation.

Wong Wing v. *United States*, 163 U.S. 228, 235 (1896); *see also Carlson* v. *Landon*, 342 U.S. 524, 538 (1952) (''Detention is

necessarily a part of this deportation procedure. Otherwise aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings.''). It is therefore ''axiomatic'' that an alien's interest in being at liberty during the course of immigration proceedings is ''narrow'' and ''circumscribed by considerations of the national interest.'' *Doherty* v. *Thornburgh,* 943 F.2d 204, 208, 208, 209 (2d Cir. 1991), *cert. dismissed* 503 U.S. 901 (1992),

The detention of removable criminal aliens during proceedings serves two essential purposes: Ensuring removal by preventing the alien from fleeing, and protecting the community from further criminal acts or other dangers. The stakes for the Government are considerable in this context. The apprehension of a criminal alien who absconds during the removal process is expensive, time-consuming, and, in many cases, dangerous both to Government personnel and to civilians. Failure to recover such an alien for removal means not only scores of hours wasted by immigration judges, Service attorneys, interpreters, immigration officers, and clerical and support staff, but also a fugitive alien criminal beyond the control of lawful process and at large in the community. Released aliens who abscond calculate—correctly—''that the INS lacks the resources to conduct a dragnet.'' *Ofosu* v. *McElroy*, 98 F.3d 694, 702 (2d Cir. 1996). As further discussed below, abscondment by criminal aliens subject to removal has become disturbingly frequent.

Beginning with the Anti-Drug Abuse Act of 1988 (ADAA), Pub. L. 100–690, 102 Stat. 4181, continuing with the Immigration Act of 1990 (Immact), Pub. L. 101–649, 104 Stat. 4978, and culminating with the recent enactment of AEDPA and IIRIRA, successive legislation over the past decade has mandated increasingly severe immigration consequences for aliens convicted of serious crimes, and has imposed restrictive detention conditions on such aliens during removal proceedings. Congress' concern with criminal aliens who flee or commit additional crimes is plainly evident in the detention provisions of the ADAA and Immact, as amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232, 105 Stat. 1733 *See* 8 U.S.C. section 1252 (a)(2) (1995) (mandating detention of aliens convicted of an aggravated felony except upon demonstration of lawful entry and lack of threat to community and flight risk); 8 U.S.C. section 1226(e) (1995) (mandating detention of aliens convicted of an aggravated felony who seek admission to the United States except when home country refuses to repatriate and alien demonstrates lack of threat to community). The legislative history of former section 242(a)(2) and IIRIRA section 303 also reflects these concerns. *See* S. Rep. No. 48, 104th Cong., 1st Sess., 1995 WL 170285 (Apr. 7, 1995); 141 Cong. Rec. S7803, 7823 (daily ed. June 7, 1995) (statement of Senator Abraham); *see also Davis* v. *Weiss*, 749 F. Supp. 47, 50 (D. Conn. 1990); *Morrobel* v. *Thornburgh,* 744 F. Supp. 725, 728 (E.D. Va. 1990) (Legislators reasonably deemed mandatory detention necessary because aggravated felons ''are likely to abscond before the completion of the deportation proceedings.'').

These concerns motivated some of the basic procedural reforms embodied in IIRIRA. *See, e.g.,* INA section 236(a)(2) (raising minimum bond during proceedings from $500 to $1,500); 236(c) (mandating detention of criminals during proceedings); section 236(e) (barring judicial review of discretionary custody determinations); 241(a) (requiring detention of aliens during 90-day ''removal period'' after final order). Congress has specifically addressed the detention of removable criminal aliens by greatly increasing Service detention resources over several years, and by expressing in IIRIRA a clear intention that aliens removable from the United States on the basis of a crime be detained, except in very limited circumstances, *see* INA section 236(c)(1), (2) (permanent provisions mandating detention during proceedings of most aliens removable on criminal grounds); section 241(a)(2) (''Under no circumstances during the removal period shall the Attorney General release an alien who has been found'' removable on criminal or terrorist grounds.). Discretion remains under the statute only by virtue of transitional rules enacted to ease the burden of mandatory detention on the Service's detention resources.

Indeed, section 236(c) of IIRIRA would now bar the release during proceedings of most aliens removable on criminal grounds, were it not for the Service's notification to Congress invoking the TPCR. Having invoked the TPCR on the basis of insufficient detention resources, the Department remains responsible for exercising its temporary discretion in conformity with congressional intent. In the Department's judgment, a carefully crafted regime incorporating both case-by-case discretion and, where appropriate, clear, uniform rules for detention by category, best achieves that goal.

The Department has retained the structure of the proposed rule, including its mandatory detention categories, despite the commenters' concern that the rule encroaches on the authority of immigration judges and lacks the flexibility of a universal case-by-case approach. The final rule preserves a wide area of discretion for Service and EOIR decision makers, but defines limited situations in which a criminal alien's conduct warrants a *per se* rule of detention. Case-by-case discretion remains overwhelmingly the general rule. Per se rules are drawn narrowly, and only where, in the carefully considered judgment of the Attorney General, the danger of an erroneous release is sufficiently grave, and the danger of unwarranted detention during proceedings sufficiently minimal, as to tip the balance in favor of such a rule. *See Fook Hong Mak* v. *INS*, 435 F.2d 728, 730 (2d Cir. 1970) (Agency appropriately exercises discretion where it ''determines certain conduct to be so inimical to the statutory scheme that all persons who have engaged in it shall be ineligible for favorable consideration, regardless of other factors that otherwise might tend in their favor.'').

The Department disagrees with comments suggesting that the TPCR require case-by-case adjudication for all ''lawfully admitted'' criminal aliens. The TPCR, by their terms, grant discretion to the Attorney General to consider certain categories of criminal aliens for release. It does not specify that that discretion be exercised by adjudication rather than by rulemaking. ''It is a well-established principle of administrative law that an agency to whom Congress grants discretion may elect between rulemaking and ad hoc adjudication to carry out its mandate.'' *Yang* v. *INS,* 70 F.3d 932, 936 (9th Cir. 1996) (citing *American Hosp. Assoc.* v. *NLRB,* 499 U.S. 606, 611–13 (1991); *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 294 (1974)). Agencies may resolve matters of general applicability through the promulgation of rules ''even if a statutory scheme requires individualized determination * * * unless Congress has expressed an intent to withhold that authority.'' *American Hosp.*, 499 U.S. at 613; *see also Fook Hong Mak*, 435 F.2d at 731 (''(I)t is fallacious to reason that because Congress *prevented* the Attorney General from exercising any discretion in favor of those groups[] which Congress had found to have abused the privileges accorded them, it meant to *require* him to exercise it in favor of everyone else on a case-by-case basis even if experience should convince him

of the existence of another group with similar potentialities or actualities of abuse.'' (emphasis in original)).

Reviewing courts have upheld the Department's rulemaking in this area in light of these principles of administrative law. For example, in *Reno* v. *Flores*, 507 U.S. 292 (1993), the Supreme Court upheld a rule categorically precluding the release of detained juveniles not able to have either a legal guardian or one of several listed relatives assume custody. The Court held the rule to be a permissible exercise of the Attorney General's discretion, because it rationally advanced a legitimate governmental objective. *Id.* at 306. Similarly, in *Yang*, the Ninth Circuit upheld a rule categorically denying asylum, as a matter of discretion, to aliens ''firmly resettled'' prior to arrival in the United States. In *Fook Hong Mak*, the Second Circuit upheld a regulation barring, again in the exercise of the Attorney General's discretion, any alien transiting the United States without a visa from adjusting status under section 245 of the Act. *Cf. Anetekhai* v. *INS*, 876 F.2d 1218, 1223 (5th Cir. 1989) (Congress may require all aliens who marry citizens after the institution of deportation proceedings to reside outside United States for 2 years without opportunity to demonstrate bona fides of marriage.)

''There is not doubt that preventing danger to the community is a legitimate regulatory goal.'' *United States* v. *Salerno*, 481 U.S. 739, 747 (1987). Preventing abscondment by removable criminal aliens, and doing so in a way that minimizes waste of the Service's scarce enforcement resources and promotes consistent application of the law, are also legitimate goals. This rule exercises a well-established rulemaking authority of the Attorney General, in an area of ''sovereign prerogative, largely within the control of the executive and the legislative, '' *Landon* v. *Plasencia,* 459 U.S. 21, 34 (1982).

General Rules Versus Ad Hoc Adjudication for Permanent Resident Aliens

Several commenters emphasized the special status of permanent resident aliens. That status entails certain rights with regard to removal proceedings, *see Landon* v. *Plasencia, supra,* but does not prohibit Congress or the Attorney General from establishing categories of criminal or terrorist permanent resident aliens whose crimes or conduct evidence a danger to the community or a flight risk sufficiently serious to require detention.

Nevertheless, the Department has long maintained, and continues to maintain, a policy of special care with regard to procedural protections for permanent resident aliens. This rulemaking does not depart from that tradition. Permanent resident aliens retain the full panoply of rights and privileges in removal proceedings. The final rule affords a full discretionary custody determination to nearly all permanent resident aliens during such proceedings, and makes exceptions only in the extreme circumstances specified in § 236.1(c)(5).

The circumstances covered by § 236.1(c)(5) of the proposed rule uniformly present compelling indicia of flight risk and danger to the community. First, to be subject to the TPCR, an alien must have a serious criminal conviction constituting a basis for removal from the United States. (Indeed, not all crimes constituting grounds for removal trigger the TPCR.) Second, in order to be subject to mandatory detention, a permanent resident alien must either (1) have escaped or attempted to escape from a prison or other lawful government custody; (2) have fled at high speed from an immigration checkpoint; or (3) have been convicted of one of the crimes specified in § 236.1(c)(5)(i)(A). The specified crimes include murder, rape, sexual abuse of a minor, trafficking in firearms, explosives, or destructive devices, certain other explosive materials offenses, kidnaping, extortion, child pornography, selling or buying of children, slavery, treason, sabotage, disclosing classified information, and revealing the identity of undercover agents.

Further, to address the concerns raised by commenters concerning procedural protections for permanent residents, the Department has also modified the final rule in three ways as it applies to permanent residents. First, the final rule requires that an alien, including one admitted as a nonimmigrant, receive a sentence (or sentences in the aggregate) of at least 2 years, not including portions suspended, in order to trigger the requirements of § 236.1(c)(5). Permanent residents with less than the required sentence of 2 years will be eligible for an individualized custody determination; other lawfully admitted aliens with less than the required sentence will be considered under § 236.1(c)(4). Second, the final rule will exempt from § 236.1(c)(5) permanent residents who have remained free of convictions, immigration violations, and the like for an uninterrupted period of 15 years prior to the institution of proceedings (not including any periods of incarceration or detention).

Finally, the final rule has been revised to provide an individualized custody determination to former permanent residents subject to the TPCR who have lost that status through a final order of deportation under former section 242 of the Act, and have been in Service custody pursuant to the final order for six months. The district director's decision may be appealed to the Board of Immigration Appeals under existing procedures. It is expected that releases in this category of final-order criminal cases will be rare, but the authority has been incorporated for use in compelling circumstances. Similar authority exists under section 241 of the Act for removal cases commenced on or after April 1, 1997. These three modifications will further ensure adequate procedural safeguards for the custody of permanent resident aliens (and aliens challenging the loss of such status through the prescribed jurisdictional channels).

It is only within the extremely narrow range of offenses specified in the proposed rule, further narrowed by the aforementioned modifications, that the final rule requires detention of permanent resident aliens without discretionary release consideration. The constitutional concerns expressed by the commenters focus, therefore, on this very limited class of cases, and generally rest on the claim that due process prohibits Congress and the Attorney General from mandating the detention of *any* class of permanent resident aliens, regardless of the character of their criminal or terrorist offenses. The Department disagrees with this position.

The Supreme Court has affirmed much broader administrative authority over detention of convicted criminals even in areas of law not informed by the ''plenary power'' doctrine. Individuals convicted of a crime have necessarily received all the process required by the criminal justice system; they have been convicted on the basis of either a voluntary guilty plea or a finding of guilt beyond a reasonable doubt, with opportunity for appeal and collateral habeas corpus challenge. In this context, the Supreme Court has upheld a general congressional delegation of sentencing authority to an independent agency within the Judicial Branch. *Mistretta* v. *United States*, 488 U.S. 361 (1989). If it is permissible for an agency to subject a U.S. citizen, upon conviction, to a mandatory sentence without individualized discretionary consideration, it would seem even more clearly permissible for the Attorney General to require custody of a narrow

class of convicted criminal aliens without individualized discretionary consideration during the ensuing proceedings to effect their removal. *Cf. Jone* v. *United States*, 463 U.S. 354, 364–65 (1983) (''The fact that a person has been found, beyond a reasonable doubt, to have committed a criminal act certainly indicates dangerousness.'') (Approving civil commitment, based on insanity plea in criminal proceeding, for 50 days without individualized hearing). Indeed, the power upheld in *Mistretta* is far broader than that asserted here, applying to U.S. citizens and criminal defendants, both of whom enjoy extensive constitutional rights and procedural protections beyond those afforded to criminal aliens in civil removal proceedings. *See Mathews* v. *Diaz*, 426 U.S. 67, 79–80 (1976) (''In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens.''); *INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1039–40 (1984) (cataloguing constitutional procedural protections guaranteed to criminal defendants but not to aliens in deportation proceedings).

The doctrine of plenary power bolsters this conclusion. '' 'For reasons long recognized as valid, the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.' '' *Flores*, 507 U.S. at 305 (quoting *Mathews* v. *Diaz*, *supra*, at 81); *accord United States* v. *Valenzuela-Bernal*, 458 U.S. 858, 864 (1982) (''The power to regulate immigration—an attribute of sovereignty essential to the preservation of any nation—has been entrusted by the Constitution to the political branches of the Federal Government.''). '' '(O)ver no conceivable subject is the legislative power of Congress more complete.' '' *Flores*, 426 U.S. at 305 (*quoting Fiallo* v. *Bell*, 430 U.S. 787, 792, (1977); *Oceanic Steam Navig. Co.* v. *Stranahan*, 214 U.S. 320, 339 (1909)).

Accordingly, an immigration law is constitutional if it is based upon a ''facially legitimate and bona fide reason.'' *Fiallo*, 430 U.S. at 794–95; *Kleindienst* v. *Mandel*, 408 U.S. 753, 770 (1972); *Garcia* v. *INS*, 7 F.3d 1320, 1327 (7th Cir. 1993). ''Once a facially legitimate and *bona fide* reason is found, courts will neither look behind the exercise of discretion, nor test it by balancing its justification against the constitutional interest asserted by those challenging the statute.'' *Campos* v. *INS*, 961 F.2d 309, 316 (1st Cir. 1992) (citing *Fiallo*, 430 U.S. at 794–95). Courts have applied this deferential test to sustain the constitutionality of one of the TPCR's predecessor mandatory detention statutes as applied to permanent residents, *Davis*, 749 F. Supp. at 50; *Morrobel*, 744 F. Supp. at 728, and the Supreme Court has applied a similar test in its most recent case addressing mandatory detention, *Flores*, 507 U.S. at 306 (upholding juvenile alien detention regulation as ''rationally advancing some legitimate governmental purpose'').

Congress' plenary power over immigration extends to all non-citizens, including permanent resident aliens. Aliens

> [w]hen legally admitted * * * have come at the Nation's invitation, as visitors or permanent residents, to share with us the opportunities and satisfactions of our land * * *. So long, however, as aliens fail to obtain and maintain citizenship by naturalization, they remain subject to the plenary power of Congress to expel them under the sovereign right to determine what noncitizens shall be permitted to remain within our borders.

Carlson, 392 U.S. at 534 (upholding immigration detention of permanent resident alien); *accord Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206 (1953) (affirming detention of returning permanent resident alien); *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 587–88 (1952) (''That aliens remain vulnerable to expulsion after long residence is a practice that bristles with severities. But it is a weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state. Such is the traditional power of the Nation over the alien [,] and we leave the law on the subject as we find it.'').

Carlson v. *Landon*, 342 U.S. 524 (1952)—''the leading case involving a test of the legality of detention under immigration laws, ''*Duldulao* v. *INS*, 90 F.3d 396, 400 (9th Cir. 1996)—squarely addresses the detention of permanent resident aliens. The Supreme Court in *Carlson* upheld the Attorney General's detention of permanent residents under the Internal Security Act based solely on evidence of their Communist Party membership and support, without requiring any individualized inquiry into whether such aliens had ever engaged in specific acts of sabotage or subversion. 342 U.S. at 541. In essence, the Court allowed active membership in the Communist Party and espousal of its ideology to be used as proxies for an alien's dangerousness. The present rule, by contrast, relies on actual egregious crimes or conduct of convicted criminals as proxies for danger to the community and flight risk. *Cf. Morrobel*, 744 F. Supp. at 728 (''If there was no abuse of discretion in detaining alien communist in *Carlson*, it can hardly be improper for Congress, having determined that aliens convicted of aggravated felonies * * * are a danger to society, to direct the Attorney General to detain them pending deportation proceedings.''); *Davis*, 749 F. Supp. at 51 (analogizing mandatory detention of aggravated felons to detention upheld in *Carlson*).

The Supreme Court has recently applied the principles of *Carlson* to a regulations mandating immigration detention of certain juveniles by category. *Flores* v. *Reno*, 507 U.S. 292 (1993). *Flores* recognizes the power of Congress and the Attorney General to establish detention rules that single out classes of aliens for differing treatment, without providing for an individualized determination as to whether each member of the class warrants such treatment. When Congress or the Attorney General does so, the only process due is a determination of whether the alien in fact belongs to the class at issue.

Hence, the Court in *Flores* held that the Service could, without violating procedural or substantive due process, enforce a regulation generally barring the release of juvenile alien detainees, other than those able to have a legal guardian or certain specified close relatives take custody. The Court rejected arguments that the Service had impressibly employed a ''blanket presumption'' that other custodians were unsuitable, and that the Service must conduct ''fully individualized'' hearings on their suitability in each case. *Id.* at 308, 313–14 & n.9. The Service was not required, the Supreme Court stated, to ''forswear use of reasonable presumptions and generic rules.'' *Id.* at 313. The Service needed only make such individual determinations as were necessary for accurate application of the regulation, such as ''is there reason to believe the alien deportable?'', ''is the alien under 18 years of age?'', and does the alien have an available adult relative or legal guardian?'' *Id.* at 313–14.

Like the regulation upheld in *Flores*, the final rule provides for an individualized hearing on whether an alien in custody actually falls within a category of aliens subject to mandatory detention. In determining or redetermining custody conditions, the district director or IJ necessarily asks such individualized questions as ''is this person an alien?'', ''is there reason to believe that this person was convicted of a crime covered by the TPCR?'', and ''is there reason to believe that this person falls within a category

barred from release under applicable law?'' If the district director or IJ resolves these individualized questions affirmatively, and thus ascertains that the alien belongs to a class of convicted criminals barred from release, ''(t)he particularization and individuation need go no further than this,'' *id.* at 314. Under *Flores*, the IJ or district director may validly enforce the regulatory policy of detaining those classes of aliens whose release has been determined by Congress or the Attorney General to present unacceptable risks. *Cf. Davis*, 749 F.Supp. at 52 (''The most effective procedures are those already built into (one of the TPCR's predecessors), namely those procedures which ensure that the alien is rightfully an 'aggravated felon' under the (INA) and is properly subject to mandatory detention.'').

Plenary power confers upon Congress the undisputed authority to curtail a criminal permanent resident alien's right to remain in the United States. *See, e.g., Carlson* v. *Landon*, 342 U.S. at 534 (''The basis for the deportation of presently undesirable aliens resident in the United States is not questioned and requires no reexamination.''). Congress has exercised this power in AEDPA and IIRIRA by barring permanent residents convicted of an aggravated felony from seeking discretionary relief from removal. The elimination of relief considerably increases flight risk, *see, e.g., Bertrand* v. *Sava*, 684 F.2d 204, 217 n.16 (2d Cir. 1982) (''The fact that the petitioners are unlikely to succeed on their immigration applications * * * suggests that they pose * * * a risk (to abscond) if (released).''), and thus increases the need for detention of aliens barred in this manner from remaining in the United States.

The congressional power to compel removal includes the power to effect removal by the necessary use of detention. ''An alien's freedom from detention is only a variation on the alien's claim of an interest in entering the country.'' *Clark* v. *Smith*, 967 F.2d 1329, 1332 (9th Cir. 1992); *see also Carlson* v. *Landon*, 342 U.S. at 538; *Wong Wing*, 163 U.S. at 235; *Doherty*, 943 F.2d at 212 (''(F)rom the outset of his detention, Doherty has possessed, in effect, the key that unlocks his prison cell * * *. Because deportation was less attractive to him than his present course and because he had availed himself of the statutory mechanisms provided for aliens facing deportation, Doherty is subject to the countervailing measures Congress has enacted to ensure the protection of national interests.''). If Congress may bar specified criminal aliens from making discretionary applications to remain in the United States, it may also bar such criminals from making discretionary applications for release during removal proceedings, especially when detention is a necessary adjunct of the removal process, *Carlson* v. *Landon*, *supra*, and the elimination of relief itself creates overwhelming incentives to abscond, *Bertrand* v. *Sava*, *supra*.

Despite the broad congressional and executive authority recognized and consistently reaffirmed over the past century by the Supreme Court, several district courts have held mandatory detention statutes unconstitutional under the Due Process Clause of the Fifth Amendment. *See, e.g., St. John* v. *McElroy*, 917 F. Supp. 243, 247 (S.D.N.Y. 1996). In the Department's view, these district courts have misapprehended the law of immigration detention, and have failed to defer to Congress and the Executive in matters of immigration as required by the Supreme Court's teachings.

Some of the district court cases err in applying to immigration detention the standard for pre-trial criminal bail determinations articulated in *United States* v. *Salerno*, 481 U.S. 739, 747–51 (1987). *See Kellman* v. *District Director*, 750 F. Supp. 625, 627 (S.D.N.Y. 1990); *Leader* v. *Blackman*, 744 F. Supp. 500, 507 (S.D.N.Y. 1990). The Supreme Court, however, has rejected the extension of *Salerno* in a post-conviction context. *Hilton* v. *Braunskill*, 481 U.S. 770, 779 (1987) (''[A] successful (state) habeas petitioner is in a considerably less favorable position than a pretrial arrestee, such as the respondent in *Salerno*, to challenge his continued detention pending appeal. Unlike a pretrial arrestee, a state habeas petitioner has been adjudged guilty beyond a reasonable doubt * * *.''). Similarly, in *Doherty*, the Second Circuit determined that ''a different focus (from criminal bail standards) must govern the determination of constitutionality of pre-deportation detention.'' *Doherty*, 943 F.2d at 210 (citing *Dor.* v. District Director, INS, 891 F.2d 997, 1003 (2d Cir. 1989)). In reviewing the constitutionality of an 8-year detention, *Doherty* inquired only into the presence of any bad faith or invidious purpose in the Service's decision-making process. 943 F.2d at 210–11.

St. John and the other district court cases invalidating mandatory detention rules as applied to permanent residents generally decline to apply the ''facially legitimate, *bona fied* reason'' standard, and instead engage in a balancing of individual and governmental interests. The balancing test set forth in *Mathews* v. Eldridge, 424 U.S. 319 (1976), does not, however, apply in the context of immigration detention. The Ninth Circuit had applied the *Mathews* test in this manner in *Flores* v. Meese, 942 F.2d 1352, 1364 (9th Cir. 1991). The Supreme Court reversed, and applied a different test, requiring only that the challenged regulation ''meet the (unexacting) standard of rationally advancing some legitimate governmental purpose.'' *Flores*, 507 U.S. at 306.

Even if a balancing of interests were permitted—under governing case law, it is not—the paramount interest of the United States in removing criminal aliens and protecting its citizens form crime would outweigh any liberty interest that an alien removable from the United States on criminal grounds could claim. ''[A]n alien's right to be at liberty during the course of deportation proceedings is circumscribed by considerations of the national interest,'' and is consequently ''narrow.'' *Doherty*, 943 F.2d at 208, 209; *see also Flores* 507 U.S. at 305 (''If we harbored any doubts as to the constitutionality of institutional custody over unaccompanied juveniles, they would surely be eliminated as to those juveniles * * * who are aliens.'').

Moreover, because the TPCR apply in removal cases only during proceedings, and because the Board of Immigration Appeals expedites detained cases on its docket, the length of an alien's detention under this rule is necessarily finite. Criminal aliens with an enforceable final order of removal must be detained and removed within 90 days; if not removed within that period, such aliens become eligible for discretionary release consideration. See INA section 241(a). Criminal aliens ordered deported or removed whose home countries will not accept repatriation may be considered for release at any time in the discretion of the Service, and permanent residents who lose that status through a final order of deportation may generally be considered for release after six months. These provisions eliminate the possibility of indefinite detention without discretionary review, and thus avoid violation of any protected liberty interest.

In contrast to the ''narrow'' liberty interest of aliens removable on criminal grounds, ''[t]he government's interest in efficient administration of the immigration laws at the border * * * is weighty. Further, it must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature.'' *Landon* v. *Plasencia*, 459 U.S. 21, 34

(1982). The Government's interest in maintaining the procedures embodied in the final rule is also ''weighty.'' The detention requirements for permanent residents single out aliens with egregious indicia of flight risk and danger to the community. The risk of recidivism and flight upon release is unquestionably great for these aliens; the risk of erroneous detention is correspondingly low. The provisions of the final rule reflect a legislative and executive judgment that, for the limited classes of criminal permanent resident aliens specified in the rule, discretionary release poses unacceptable risks.

Individualized consideration of discretionary release for these groups would also impose considerable administrative burdens on the Government. In many instances, bond hearings become an arena of protracted and costly collateral litigation in their own right, beyond and apart from the extensive administrative processes for determining removability, and the criminal justice process. Although the primary purposes of the final rule are to protect the public and to ensure the departure of aliens removable on criminal grounds, administrative costs are a legitimate consideration in determining the best means to achieve these objectives. Even under the balancing analysis prohibited by *Flores*, therefore, these governmental interests would easily outweigh the ''narrow'' interest of an alien removable on criminal grounds in making applications to remain at large during proceedings to effect removal.

The elemental error of *Kellman, St. John*, and the cases that follow them lies in their rejection of the Supreme Court's constitutional deference to Congress and the Executive in matters of immigration. The *Kellman* court acknowledges a ''significant degree'' of deference owed to Congress' substantive decisions regarding deportability, but asserts that ''the same deference is not mandated when examining the way in which that deportation is accomplished.''*Kellman*, 750 F. Supp. at 627. That assertion finds neither support nor solicitude in the jurisprudence of the Supreme Court. *See, e.g., Flores, supra; Carlson* v. *Landon, supra.* The respondents in *Flores* attempted this sort of distinction, urging the Supreme Court to require individualized discretionary custody determinations, despite the plenary power doctrine, as a matter of ''procedural due process.'' 507 U.S. at 308. The Court's response was unequivocal: ''This is just the 'substantive due process' argument recast in 'procedural due process' terms, and we reject it for the same reasons.'' *Id*.

In the Department's view, the final rule takes the least restrictive approach to the detention of permanent residents consistent with the dictates of public safety and the important public policy of removing aliens who have committed serious crimes in this country. The Department is confident that the final rule provides adequate procedural protections for the custody of permanent resident aliens, and is aware of no other means of ensuring the requisite level of protection for the public. This rule draws upon the Department's experience over time in administering the immigration laws, incorporates its careful consideration of the individual and public interests at stake, and reflects its understanding of the will of Congress. In addressing these concerns, the rule provides needed reform of current procedures for the detention of aliens, including permanent resident aliens, who have become subject to removal as a result of crimes committed in this country.

The Meaning of ''Lawfully Admitted''

For aliens in removal proceedings, the proposed rule construed the TPCR's term ''lawfully admitted'' by reference to the definition of ''admitted'' in section 101(a)(13) of the Act. Accordingly, the proposed rule treated returning permanent resident ''applicants for admission'' as not ''lawfully admitted'' under the TPCR, and hence not eligible to be considered for release. Several commenters urged that the Department reconsider this interpretation to recognize an exception for permanent residents. Permanent residents, even those returning from abroad, remain ''lawfully admitted for permanent residence'' until termination of that status by a final administrative order. 8 CFR 1.1(p). One commenter argued, therefore, as follows:

> New INA § 101(a)(13) provides that under certain limited circumstances a lawful permanent resident can be deemed to be ''seeking admission into the United States.'' But this individual nevertheless remains a lawful permanent resident who is ''lawfully admitted'' for purposes of discretionary release from detention under the TPCR. In short, the phrase ''lawfully admitted'' does not necessarily mean ''is not presently seeking admission.'' Indeed, the language of § 101(a)(13)—the very provision the INS relies on to justify its new interpretation (in the proposed rule)—keeps these concepts distinct.

The Department has carefully considered this and other similar comments, and will revise its interpretation in the final rule much along the lines recommended by the commenters.

The final rule will consider an ''arriving alien'' in removal proceedings to be ''lawfully admitted'' for purposes of the TPCR if (and only if) the alien remains in status as a permanent resident, conditional permanent resident, or temporary resident. Accordingly, such aliens may be considered for parole in the discretion of the Service.

The TPCR's term ''lawfully admitted'' will apply consistently in deportation and removal proceedings. In general, an alien who remains in status as a permanent resident, conditional permanent resident, or temporary resident will be considered ''lawfully admitted'' for purposes of the TPCR. Other aliens will be considered ''lawfully admitted'' only if they last entered lawfully (and are not currently applicants for admission).

This interpretation of the term ''lawfully admitted'' is not intended to extend beyond the limited context of the TPCR. Moreover, under this final rule, a ''lawfully admitted'' alien will in many cases remain an ''applicant for admission.'' For example, as the Board recently held in *Matter of Collado,* Int. Dec. 3333 (BIA 1997), an arriving permanent resident alien who has committed an offense described in section 212(a)(2) of the Act remains an ''applicant for admission'' unless previously granted relief under sections 212(h) or 240A(a) of the Act. The same will be true of an arriving permanent resident alien who falls within the other exceptions specified in section 101(a)(13)(C) (i)–(vi) of the Act. Although ''lawfully admitted'' for purposes of the TPCR during proceedings, such an alien remains an ''applicant for admission'' and an ''arriving alien,'' charged under section 212 of the Act, and subject solely to the parole authority of the Service.

Bond Jurisdiction of Immigration Judges

One commenter asserted that the TPCR require the Attorney General to grant immigration judges bond authority over arriving aliens in removal proceedings and over aliens in exclusion proceedings. As explained in the notice of proposed rulemaking, the TPCR do not, in the Department's view, apply in exclusion proceedings, because they replace detention provisions applicable in removal and deportation proceedings, but do not replace the analogous provision applicable in exclusion proceedings. As regards arriving aliens in removal proceedings, the TPCR simply confer discretion upon

the Attorney General, leaving it to the Department to determine which subordinate officials will exercise custody authority. The Department has determined that parole authority will remain exclusively with the Service, as in the past. *See generally Shaughnessy* v. *United States ex rel. Mezei,* 345 U.S. 206 (1953) (affirming Service's decision to detain returning permanent resident alien); *Marcello* v. *Bonds,* 349 U.S. 302 (1955) (rejecting claim that custody decision by Service officer violates Due Process where Service initiates and prosecutes proceeding).

Automatic Stay of Certain Criminal Custody Redeterminations To Preserve Status Quo for Appeal

The proposed rule included a provision allowing the Service to request an emergency stay of an immigration judge's order redetermining custody conditions when the Service appeals the custody decision to the Board of Immigration Appeals. The rule also provided for an automatic stay of the immigration judge's custody redetermination where the alien is subject to the TPCR, section 440(c) of AEDPA, or section 236(c) of the Act, and the district director has set a bond of $10,000 or more (including outright denial of bond). Both of these provisions were included as permanent revisions, without regard to the expiration of the TPCR.

Several commenters objected to the automatic stay provision, arguing that it encroaches on the authority of immigration judges, incorporates a criterion (initial bond amount) not adequately indicative of bail risk, and encourages district directors to set high bonds to fortify their custody decisions against reversal. The Department has carefully considered these comments, and will retain the automatic stay provision in the final rule without modification.

Even accepting that initial bond amounts are an imperfect measure of bail risk, the automatic stay does not trigger in all cases meeting the $10,000 threshold. Rather, the $10,000 threshold and the requirement of a serious criminal offense provide the basis for a considered determination by the Service to seek an automatic stay in aid of a custody appeal. Custody appeals are themselves unusual, undertaken only in compelling cases, and subject to review by responsible senior officials within the Service. It is expected that such appeals will remain exceptional, and that Service district directors will continue to set custody conditions according to their best assessment of the bail risk presented in each case.

The interests served by the automatic stay are considerable, even if the provision only occasionally comes into play. A custody decision that allows for immediate release is effectively final if, as the Service appeal would necessarily assert, the alien turns out to be a serious flight risk or a danger to the community. In such a case, the appeal provides little benefit to the agencies exerting efforts to effect removal, and less still to the community receiving the dangerous or absconding alien criminal back into its midst. The automatic stay provides a safeguard to the public, preserving the status quo briefly while the Service seeks expedited appellate review of the immigration judge's custody decision. The Board of Immigration Appeals retains full authority to accept or reject the Service's contentions on appeal.

Treatment of Criminal Aliens Not Eligible for Relief from Removal

Several commenters objected to the provision in § 236.1(c)(5)(iv) of the proposed rule requiring detention of criminal aliens under the TPCR who do not wish to pursue relief from removal, or who lack eligibility for such relief. The provision reflects the consideration that such an alien has little incentive to appear for proceedings, and hence almost always poses a serious bail risk. Nevertheless, the Department has reconsidered the inclusion of this provision in § 236.1(c)(5), and will include it instead in § 236.1(c)(4) of the final rule. Hence, permanent residents and aliens with old convictions and no subsequent indicia of bail risk will be eligible to be considered for release even where they lack or decline to pursue options for relief from removal. The Department would expect, however, only the most sparing use of this discretionary authority.

Two commenters objected that bond proceedings during the early stages of the removal process provide a poor forum to assess eligibility for relief. The Department understands this concern, and does not anticipate a conclusive showing of eligibility by the alien at this stage of proceedings. Rather, the rule reflects the practical reality that occasions do arise when plainly no relief exists or the alien does not wish to pursue relief. In those situations, discretionary release of a criminal alien is generally inappropriate.

Meaning of "when the alien is released"

One commenter asserted that the TPCR apply only to criminal aliens released directly from incarceration into Service custody. The Department has considered this comment, and rejects it for the reasons stated by the Board of Immigration Appeals in *Matter of Noble,* Int. Dec. 3301 (BIA 1997).

Limited Appearances in Bond Proceedings

One commenter requested that the final rule incorporate new provisions authorizing limited attorney appearances in bond proceedings, i.e., without obligation to represent the alien in removal proceedings. The subject matter of this comment concerns the terms of attorney representation and exceeds the substantive scope of this rulemaking. The Department remains open, however, to working with interested individuals and organizations to refine and improve its regulations in this and other areas within its authority.

Technical and Conforming Amendments

The final rule corrects 8 CFR 3.6(a) to eliminate an outdated internal cross-reference, and corrects § 3.6(a) and § 236.1(d)(4) to conform with the final rule's provisions for stays of custody redeterminations by immigration judges. The final rule also clarifies the proposed § 236.1(c)(4) by changing the placement of language excepting permanent resident aliens from the detention requirements of that paragraph.

Effect on Detention Resources

The Department has taken into consideration the effect of the final rule on Service detention resources, and expects a management impact.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects individual aliens, not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small

Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1226, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002; sec. 303(b)(3) of Pub. L. 104–208, Div. C.

§ 3.6 [Amended]

2. In § 3.6, paragraph (a) is amended by revising the reference to ''242.2(d) of this chapter'' to read ''236.1 of this chapter, § 3.19(i),''.

3. In § 3.19, paragraph (h) and (i) are added to read as follows:

§ 3.19 Custody/bond.

* * * * *

(h)(1)(i) While the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub. L. 104–208 remain in effect, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens:

(A) Aliens in exclusion proceedings;

(B) Arriving aliens in removal proceedings, including persons paroled after arrival pursuant to section 212(d)(5) of the Act;

(C) Aliens described in section 237(a)(4) of the Act;

(D) Aliens subject to section 303(b)(3)(A) of Pub. L. 104–208 who are not ''lawfully admitted'' (as defined in § 236.1(c)(2) of this chapter); or

(E) Aliens designated in § 236.1(c) of this chapter as ineligible to be considered for release.

(ii) Nothing in this paragraph shall be construed as prohibiting an alien from seeking a redetermination of custody conditions by the Service in accordance with part 235 or 236 of this chapter. In addition, with respect to paragraphs (h)(1)(i)(C), (D), and (E) of this section, nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within any of those paragraphs.

(2)(i) Upon expiration of the Transition Period Custody Rules set forth in section 303(b)(3) of Div. C. of Pub. L. 104–208, an immigration judge may not redetermine conditions of custody imposed by the Service with respect to the following classes of aliens:

(A) Aliens in exclusion proceedings;

(B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act;

(C) Aliens described in section 237(a)(4) of the Act;

(D) Aliens in removal proceedings subject to section 236(c)(1) of the Act (as in effect after expiration of the Transition Period Custody Rules); and

(E) Aliens in deportation proceedings subject to section 242(a)(2) of the Act (as in effect prior to April 1, 1997, and as amended by section 440(c) of Pub. L. 104–132).

(ii) Nothing in this paragraph shall be construed as prohibiting an alien from seeking a redetermination of custody conditions by the Service in accordance with part 235 or 236 of this chapter. In addition, with respect to paragraphs (h)(2)(i)(C), (D), and (E) of this section, nothing in this paragraph shall be construed as prohibiting an alien from seeking a determination by an immigration judge that the alien is not properly included within any of those paragraphs.

(3) Except as otherwise provided in paragraph (h)(1) of this section, an alien subject to section 303(b)(3)(A) of Div. C of Pub. L. 104–208 may apply to the Immigration Court, in a manner consistent with paragraphs (c)(1) through (c)(3) of this section, for a redetermination of custody conditions set by the Service. Such an alien must first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview.

(4) Unremovable aliens. A determination of a district director (or other official designated by the Commissioner) regarding the exercise of authority under section 303(b)(3)(B)(ii) of Div. C. of Pub. L. 104–208 (concerning release of aliens who cannot be removed because the designated country of removal will not accept their return) is final, and shall not be subject to redetermination by an immigration judge.

(i) Stay of custody order pending Service appeal: *(1) General emergency stay authority.* The Board of Immigration Appeals (Board) has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Service appeals the custody decision. The Service is entitled to seek an emergency stay for the Board in connection with such an appeal at any time.

(2) *Automatic stay in certain cases.* If an alien is subject to section 242(a)(2) of the Act (as in effect prior to April 1, 1997, and as amended by section 440(c) of Pub. L. 104–132), section 303(b)(3)(A) of Div. C of Pub. L. 104–208, or section 236(c)(1) of the Act (as designated on April 1, 1997), and the district director has denied the alien's request for release or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon the Service's filing of a Notice of Service Intent to Appeal Custody Redetermination (Form EOIR–43) with the Immigration Court on the day the order is issued, and shall remain in

abeyance pending decision of the appeal by the Board of Immigration Appeals. The stay shall lapse upon failure of the Service to file a timely notice of appeal in accordance with § 3.38.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

3. The authority citation for part 236 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Div. C of Pub. L. No. 104–208; 8 CFR part 2.

4. Section 236.1 is amended by:

a. Revising paragraphs (c)(1) and (d)(4);

b. Redesignating paragraphs (c)(2) through (c)(5), as paragraphs (c)(8) through (c)(11) respectively and by revising newly redesignated paragraph (c)(11); and by

(c) Adding new paragraphs (c)(2) through (c)(7), to read as follows:

§ 236.1 Apprehension, custody, and detention.

* * * * *

(c) * * *

(1) *In general.* (i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub. L. 104–208, no alien described in section 236(c)(1) of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

(ii) Paragraph (c)(2) through (c)(8) of this section shall govern custody determinations for aliens subject to the TPCR while they remain in effect. For purposes of this section, an alien ''subject to the TPCR'' is an alien described in section 303(b)(3)(A) of Div. C of Pub. L. 104–208 who is in deportation proceedings, subject to a final order of deportation, or in removal proceedings. The TPCR do not apply to aliens in exclusion proceedings under former section 236 of the Act, aliens in expedited removal proceedings under section 235(b)(1) of the Act, or aliens subject to a final order of removal.

(2) *Aliens not lawfully admitted.* Subject to paragraph (c)(6)(i) of this section, but notwithstanding any other provision within this section, an alien subject to the TPCR who is not lawfully admitted is not eligible to be considered for release from custody.

(i) An alien who remains in status as an alien lawfully admitted for permanent residence, conditionally admitted for permanent residence, or lawfully admitted for temporary residence is ''lawfully admitted'' for purposes of this section.

(ii) An alien in removal proceedings, in deportation proceedings, or subject to a final order of deportation, and not described in paragraph (c)(2)(i) of this section, is not ''lawfully admitted'' for purposes of this section unless the alien last entered the United States lawfully and is not presently an applicant for admission to the United States.

(3) *Criminal aliens eligible to be considered for release.* Except as provided in this section, or otherwise provided by law, an alien subject to the TPCR may be considered for release from custody if lawfully admitted. Such an alien must first demonstrate, by clear and convincing evidence, that release would not pose a danger to the safety of other persons or of property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding (including any appearance required by the Service or EOIR) in order to be considered for release in the exercise of discretion.

(4) *Criminal aliens ineligible to be considered for release except in certain special circumstances.* An alien, other than an alien lawfully admitted for permanent residence, subject to section 303(b)(3)(A) (ii) or (iii) of Div. C. of Pub. L. 104–208 is ineligible to be considered for release if the alien:

(i) Is described in section 241(a)(2)(C) of the Act (as in effect prior to April 1, 1997), or has been convicted of a crime described in section 101(a)(43)(B), (E)(ii) or (F) of the Act (as in effect on April 1, 1997);

(ii) Has been convicted of a crime described in section 101(a)(43)(G) of the Act (as in effect on April 1, 1997) or a crime or crimes involving moral turpitude related to property, and sentenced therefor (including in the aggregate) to at least 3 years' imprisonment;

(iii) Has failed to appear for an immigration proceeding without reasonable cause or has been subject to a bench warrant or similar legal process (unless quashed, withdrawn, or cancelled as improvidently issued);

(iv) Has been convicted of a crime described in section 101(a)(43)(Q) or (T) of the Act (as in effect on April 1, 1997);

(v) Has been convicted in a criminal proceeding of a violation of section 273, 274, 274C, 276, or 277 of the Act, or has admitted the factual elements of such a violation;

(vi) Has overstayed a period granted for voluntary departure;

(vii) Has failed to surrender or report for removal pursuant to an order of exclusion, deportation, or removal;

(viii) Does not wish to pursue, or is statutorily ineligible for, any form of relief from exclusion, deportation, or removal under this chapter or the Act; or

(ix) Is described in paragraphs (c)(5)(i)(A), (B), or (C) of this section but has not been sentenced, including in the aggregate but not including any portions suspended, to at least 2 years' imprisonment, unless the alien was lawfully admitted and has not, since the commencement of proceedings and within the 10 years prior thereto, been convicted of a crime, failed to comply with an order to surrender or a period of voluntary departure, or been subject to a bench warrant or similar legal process (unless quashed, withdrawn, or cancelled as improvidently issued). An alien eligible to be considered for release under this paragraph must meet the burdens described in paragraph (c)(3) of this section in order to be released from custody in the exercise of discretion.

(5) *Criminal aliens ineligible to be considered for release.* (i) A criminal alien subject to section 303(b)(3)(A)(ii) or (iii) of Div. C of Pub. L. 104–208 is ineligible to be considered for release if the alien has been sentenced, including in the aggregate but not including any portions suspended, to at least 2 years' imprisonment, and the alien

(A) Is described in section 237(a)(2)(D)(i) or (ii) of the Act (as in effect on April 1, 1997), or has been convicted of a crime described in section 101(a)(43)(A), (C), (E)(i), (H), (I), (K)(iii), or (L) of the Act (as in effect on April 1, 1997);

(B) Is described in section 237(a)(2)(A)(iv) of the Act; or

(C) Has escaped or attempted to escape from the lawful custody of a local, State, or Federal prison, agency, or officer within the United States.

(ii) Notwithstanding paragraph (c)(5)(i) of this section, a permanent resident alien who has not, since the commencement of proceedings and within the 15 years prior thereto, been convicted of a crime, failed to comply with an order to surrender or a period of voluntary departure, or been subject to a bench warrant or similar legal process (unless quashed, withdrawn, or cancelled as improvidently issued), may be considered for release under paragraph (c)(3) of this section.

(6) *Unremovable aliens and certain long-term detainees.* (i) If the district director determines that an alien subject to section 303(b)(3)(A)(ii) or (iii) of Div. C of Pub. L. 104–208 cannot be removed from the United States because the designated country of removal or deportation will not accept the alien's

return, the district director may, in the exercise of discretion, consider release of the alien from custody upon such terms and conditions as the district director may prescribe, without regard to paragraphs (c)(2), (c)(4), and (c)(5) of this section.

(ii) The district director may also, notwithstanding paragraph (c)(5) of this section, consider release from custody, upon such terms and conditions as the district director may prescribe, of any alien described in paragraph (c)(2)(ii) of this section who has been in the Service's custody for six months pursuant to a final order of deportation terminating the alien's status as a lawful permanent resident.

(iii) The district director may release an alien from custody under this paragraph only in accordance with the standards set forth in paragraph (c)(3) of this section and any other applicable provisions of law.

(iv) The district director's custody decision under this paragraph shall not be subject to redetermination by an immigration judge, but, in the case of a custody decision under paragraph (c)(6)(ii) of this section, may be appealed to the Board of Immigration Appeals pursuant to paragraph (d)(3)(iii) of this section.

(7) *Construction.* A reference in this section to a provision in section 241 of the Act as in effect prior to April 1, 1997, shall be deemed to include a reference to the corresponding provision in section 237 of the Act as in effect on April 1, 1997. A reference in this section to a ''crime'' shall be considered to include a reference to a conspiracy or attempt to commit such a crime. In calculating the 10-year period specified in paragraph (c)(4) of this section and the 15-year period specified in paragraph (c)(5) of this section, no period during which the alien was detained or incarcerated shall count toward the total. References in paragraph (c)(6)(i) of this section to the ''district director'' shall be deemed to include a reference to any official designated by the Commissioner to exercise custody authority over aliens covered by that paragraph. Nothing in this part shall be construed as prohibiting an alien from seeking reconsideration of the Service's determination that the alien is within a category barred from release under this part.

* * * * *

(11) An immigration judge may not exercise the authority provided in this section, and the review process described in paragraph (d) of this section shall not apply, with respect to any alien beyond the custody jurisdiction of the immigration judge as provided in § 3.19(h) of this chapter.

(d) * * *

(4) *Effect of filing an appeal.* The filing of an appeal from a determination of an immigration judge or district director under this paragraph shall not operate to delay compliance with the order (except as provided in § 3.19(i)), nor stay the administrative proceedings or removal.

* * * * *

Dated: May 12, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–13178 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–30–AD; Amendment 39–10527; AD 98–10–15]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. Model TFE731–40R-200G Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. Model TFE731–40R–200G turbofan engines. This action requires replacing the fuel line between the main fuel pump and the motive flow pump with a serviceable assembly and adding a supporting bracket and clamp. This amendment is prompted by a report of a cracked fuel line between the main fuel pump and the motive flow pump causing the spraying of fuel on and around electrical components. The actions specified in this AD are intended to prevent fuel spraying on and around electrical components due to a cracked fuel line, which could result in an engine fire.

DATES: Effective May 19, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from AlliedSignal Aerospace Services Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received a report of a cracked fuel line between the main fuel pump and the motive flow pump causing the spraying of fuel on and around electrical components on an AlliedSignal Inc. Model TFE731–40R–200G turbofan engine. While taxiing after flight, the ground crew noted a fuel leak from the right hand engine of an Israel Aircraft Industries, LTD. (IAI) Astra SPX aircraft. The fuel line, part number (P/N) 3061191–1, between the main fuel pump and the motive flow pump, was found cracked at the weld of the elbow fitting. The right-hand engine had accumulated 8 operating hours. The investigation revealed that during manufacturing of the fuel line between the main fuel pump and the motive flow pump, inadequate weld penetration was created by an orbital weld operation. The lack of penetration was not identified by the post-weld X-ray inspection. The fracture of the fuel line was due to high cycle fatigue which initiated at the localized area of incomplete weld penetration. This condition, if not corrected, could result in fuel spraying on and around electrical components due to a cracked fuel line, which could result in an engine fire.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–5111, dated April 16,

1998, that describes procedures for replacing the fuel line between the main fuel pump and the motive flow pump with a serviceable assembly and adding a supporting bracket and clamp.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent fuel line cracking. This AD requires, within 10 hours time in service (TIS) after the effective date of this AD, replacing the fuel line between the main fuel pump and the motive flow pump with a serviceable assembly and adding a supporting bracket and clamp. The actions are required to be accomplished in accordance with the ASB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–30–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–10–15 ALLIED SIGNAL INC.: Amendment 39–10527. Docket 98–ANE–30–AD.

Applicability: AlliedSignal Inc. Model TFE731–40R–200G turbofan engines, equipped with a fuel line, part number (P/N) 3061191–1, between the main fuel pump and the motive flow pump. These engines are installed on but not limited to Israel Aircraft Industries LTD. (IAI) Model Astra SPX aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel spraying on and around electrical components due to a cracked fuel line, which could result in an engine fire, accomplish the following:

(a) Within 10 hours time in service (TIS) after the effective date of this AD, replace the fuel line, P/N 3061191–1, between the main fuel pump and the motive flow pump, with a serviceable assembly, and add a supporting bracket and clamp, in accordance with the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–5111, dated April 16, 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. ASB:

Document No.	Pages	Date
TFE731–A73–5111	1–8	April 16, 1998.

Total pages: 8.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace Services Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 1998.

Issued in Burlington, Massachusetts, on May 7, 1998.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–12917 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–54–AD; Amendment 39–10523, AD 98–10–11]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–3, –3B, –3C, –5, –5B, and –5C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to CFM International CFM56–3, –3B, –3C, –5, –5B, and –5C series turbofan engines. This action supersedes telegraphic AD T97–25–51 that currently requires removal of one engine from an aircraft, and replacement with a serviceable engine or replacement of parts, if both engines are equipped with a specific accessory gearbox (AGB) starter gearshaft or transfer gearbox (TGB) input bevel gear, and daily checks of the AGB/TGB magnetic chip detector. This amendment is prompted by further investigation that has revealed that certain TGB output bevel gears and AGB intermediate gear assemblies on CFM56–3, –3B, and –3C series engines, and AGB gearshaft cluster spur assemblies on CFM56–5, –5B, and –5C series engines could also be affected. The actions specified by this AD are intended to prevent inflight engine shutdowns due to an AGB starter gearshaft, TGB input bevel gear, TGB output bevel gear, AGB gearshaft cluster spur assembly or AGB intermediate gear assembly failure.

DATES: Effective June 3, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 20, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–54–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Glorianne Messemer, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; Telephone (781) 238–7132, Fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On December 4, 1997, the Federal Aviation Administration (FAA) issued telegraphic airworthiness directive (AD) T97–25–51, applicable to CFM International (CFMI) CFM56–3, –3B, and –3C series turbofan series engines, which requires removal of one engine from an aircraft, and replacement with a serviceable engine or replacement of parts, if both engines are equipped with a specific accessory gearbox (AGB) starter gearshaft or transfer gearbox (TGB) input bevel gear. In addition, that telegraphic AD requires daily checks of the AGB/TGB magnetic chip detector on engines identified by engine serial number (ESN) in the applicability section of that telegraphic AD until installation of a serviceable starter gearshaft or input bevel gear. That action was prompted by reports of three inflight engine shutdowns due to AGB starter gearshaft failures, and reports of four findings of TGB input bevel gear cracks that were detected during inspections. All seven reports occurred on low time newly delivered CFM56–3 series turbofan engines. The engines involved in these reports had time in service since new ranging from 213 to 500 hours, and cycles in service since new ranging from 153 to 229.

Preliminary investigation results indicate that the root cause of the AGB starter gearshaft failure and TGB input bevel gear cracks may stem from the improper cleaning procedure prior to the black oxide process during manufacture that causes residual stresses around the welding areas that could lead to a crack. That condition, if not corrected, could result in inflight engine shutdowns due to an AGB starter gearshaft or TGB input bevel gear failure.

Since the issuance of that telegraphic AD, the FAA has determined that certain TGB output bevel gears and AGB intermediate gear assemblies on CFM56–3, –3B, and –3C series engines, and AGB gearshaft cluster spur assemblies on CFM56–5, –5B, and –5C series engines could also be affected. There are 44 total AGB starter gearshafts, 41 total TGB input bevel gears, 33 total TGB output bevel gears, 60 total AGB gearshaft cluster spur assemblies, and 37 AGB intermediate gear assemblies that may be affected. Therefore, this expands the applicability of the AD to include those engines with these parts installed.

The FAA has reviewed and approved the technical contents of CFMI CFM56–3/–3B/–3C Alert Service Bulletin (ASB) No. 72–A861, Revision 3, dated December 3, 1997, that describes procedures for AGB/TGB magnetic chip detector inspections. In addition, the FAA has reviewed and approved the technical contents of CFMI CFM56–3/–3B/–3C Service Bulletin (SB) No. 72–863, Revision 1, dated November 18, 1997; CFMI CFM56–3/–3B/–3C SB No. 72–865, dated November 18, 1997;

CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997; CFMI CFM56–3/–3B/–3C SB No. 72–873 Revision 1, dated February 5, 1998; CFMI CFM56–5 SB No. 72–523, Revision 1, dated January 30, 1998; CFMI CFM56–5B SB No. 72–211, Revision 1, dated January 29, 1998; and CFMI CFM56–5C SB No. 72–350, Revision 1, dated January 30, 1998. These SBs describe procedures for removal and replacement of the AGB starter gearshaft, TGB assembly, TGB input bevel gear, TGB output bevel gear, AGB gearshaft cluster spur assembly or AGB intermediate gear assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes telegraphic AD T97–25–51 to require the removal of one engine on twin engine aircraft, and replacement with a serviceable engine or replacement of parts, if both engines are equipped with a specific AGB starter gearshaft, TGB input bevel gear, TGB output bevel gear, or AGB intermediate gear assembly. This AD also requires the removal of all necessary engines on four engine aircraft, and replacement with a serviceable engine or replacement of the AGB gearshaft cluster spur assembly, if more than one affected engine is installed on the aircraft. In addition, this AD requires daily checks of the AGB/TGB magnetic chip detector on CFM56–3, –3B, and –3C series engines identified in Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–863, Revision 1, dated November 18, 1997, or CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997. If abnormal magnetic particles are found, this AD requires, prior to further flight, installation of a serviceable AGB starter gearshaft, TGB assembly, TGB input bevel gear, or TGB output bevel gear. This AD also requires, within 30 days after the effective date of this AD, installation of a serviceable AGB starter gearshaft, serviceable TGB assembly, serviceable TGB input bevel gear, serviceable TGB output bevel gear, serviceable AGB gearshaft cluster spur assembly or an AGB intermediate gear assembly, as applicable. Installation of a serviceable AGB starter gearshaft, TGB assembly, TGB input bevel gear or output bevel gear, as applicable, constitutes terminating action to the daily AGB/TGB magnetic chip detector inspections. The calendar end-date was based upon FAA risk assessment and parts availability. The actions are required to be accomplished in accordance with the service documents described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–ANE–54–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ''**ADDRESSES.**''

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–10–11 CFM International: Amendment 39–10523. Docket No. 97–ANE–54–AD. Supersedes telegraphic AD T97–25–51.

Applicability: CFM International (CFMI) CFM56–3, –3B, and –3C series turbofan engines, having any of the engine serial numbers (ESNs) identified in Table 1 of CFMI CFM56–3/–3B/–3C Service Bulletin (SB) No. 72–863, Revision 1, dated November 18, 1997, Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997, or Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–873, Revision 1, dated February 5, 1998; CFM56–5 series turbofan engines, having any of the ESNs identified in Table 1 of CFMI CFM56–5 SB No. 72–523, Revision 1, dated January 30, 1998; CFM56–5B series turbofan engines, having any of the ESNs identified in Table 1 of CFMI CFM56–5B SB No. 72–211, Revision 1, dated January 29, 1998; and CFM56–5C series turbofan engines, having any of the ESNs identified in Table 1 of CFMI CFM56–5C SB No. 72–350, Revision 1, dated January 30, 1998. These engines are installed on but not limited to Boeing 737 series, and Airbus Industrie A319, A320, A321, and A340 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the

preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inflight engine shutdowns due to an accessory gearbox (AGB) starter gearshaft, transfer gearbox (TGB) input bevel gear, TGB output bevel gear, AGB gearshaft cluster spur assembly or AGB intermediate gear assembly failure, accomplish the following:

(a) For twin engine aircraft that are equipped with both engines identified by ESN in Table 1 of the applicable SB noted in the Applicability paragraph of this AD, prior to further flight, accomplish the following:

(1) Remove one of the engines, and replace with an engine not identified by ESN in Table 1 of the applicable SB noted in the Applicability paragraph of this AD; or

(2) On one of the engines, accomplish the following as applicable:

(i) For CFM56–3, –3B, and –3C series engines:

(A) Replace the AGB starter gearshaft with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–863, Revision 1, dated November 18, 1997,

(B) Replace the TGB assembly with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–865, dated November 18, 1997; or, replace the TGB input bevel gear and/or output bevel gear, as applicable, with a serviceable part in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997,

(C) Replace the AGB intermediate gear assembly with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–873, Revision 1, dated February 5, 1998.

(ii) For CFM56–5 series engines, replace the gearshaft cluster spur assembly with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–5 SB No. 72–523, Revision 1, dated January 30, 1998.

(iii) For CFM56–5B series engines, replace the gearshaft cluster spur assembly with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–5B SB No. 72–211, Revision 1, dated January 29, 1998.

(b) For four engine aircraft that are equipped with more than one engine identified by ESN in Table 1 of CFMI CFM56–5C SB No. 72–350, Revision 1, dated January 30, 1998, prior to further flight, accomplish the following:

(1) Remove at least all but one affected engine from the aircraft, and replace with serviceable engines not identified by ESN in Table 1 of CFMI CFM56–5C SB No. 72–350, Revision 1, dated January 30, 1998; or

(2) Replace the gearshaft cluster spur assembly with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–5C SB No. 72–350, Revision 1, dated January 30, 1998, on at least all but one affected engine.

(c) For CFM56–3, –3B, and –3C series engines identified by ESN in Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–863, Revision 1, dated November 18, 1997, or CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997, prior to further flight, and thereafter once per calendar day, perform checks of the AGB/TGB magnetic chip detector in accordance with CFMI CFM56–3/–3B/–3C Alert Service Bulletin (ASB) No. 72–A861, Revision 3, dated December 3, 1997. If magnetic particles are found to be abnormal in accordance with CFMI CFM56–3/–3B/–3C ASB No. 72–A861, Revision 3, dated December 3, 1997, prior to further flight, accomplish the following as applicable:

(1) For engines identified by ESN in Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–863, Revision 1, dated November 18, 1997, remove the AGB starter gearshaft, and replace with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–863, Revision 1, dated November 18, 1997.

(2) For engines identified by ESN in Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997, remove the TGB assembly and replace with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–865, dated November 18, 1997; or, remove the TGB input bevel gear and/or TGB output bevel gear, as applicable, and replace with serviceable parts, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997.

(d) For CFM56–3, –3B, and –3C series engines identified by ESN in Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–863, Revision 1, dated November 18, 1997, remove the AGB starter gearshaft within 30 days after the effective date of this AD, and replace with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–863, Revision 1, dated November 18, 1997. Installation of a serviceable AGB starter gearshaft, as defined in paragraph (h) of this AD, and compliance with paragraph (e) of this AD, if applicable, constitutes terminating action to the daily AGB/TGB magnetic chip detector checks required by paragraph (c) of this AD.

(e) For CFM56–3, –3B, and –3C series engines identified by ESN in Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997, remove the TGB assembly in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–865, dated November 18, 1997; or, remove the TGB input bevel gear and/or output bevel gear, as applicable, within 30 days after the effective date of this AD, and replace with serviceable parts, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–867, dated November 28, 1997. Installation of a serviceable TGB assembly, or TGB input bevel gear and/or TGB output bevel gear, as defined in paragraph (h) of this AD, and compliance with paragraph (d) of this AD if applicable, constitutes terminating action to the daily AGB/TGB magnetic chip detector checks required by paragraph (c) of this AD.

(f) For CFM56–3, –3B, and –3C series engines identified by ESN in Table 1 of CFMI CFM56–3/–3B/–3C SB No. 72–873, Revision 1, dated February 5, 1998, remove the AGB intermediate gear assembly within 30 days after the effective date of this AD, and replace with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–3/–3B/–3C SB No. 72–873, Revision 1, dated February 5, 1998.

(g) For CFM56–5, –5B, and –5C series engines identified by ESN in Table 1 of CFMI CFM56–5 SB No. 72–523, Revision 1, dated January 30, 1998, CFMI CFM56–5B SB No. 72–211, Revision 1, dated January 29, 1998, or CFMI CFM56–5C SB No. 72–350, Revision 1, dated January 30, 1998, remove the gearshaft cluster spur assembly within 30 days after the effective date of this AD, and replace with a serviceable part, as defined in paragraph (h) of this AD, in accordance with CFMI CFM56–5 SB No. 72–523, Revision 1, dated January 30, 1998, CFMI CFM56–5B SB No. 72–211, Revision 1, dated January 29, 1998, or CFMI CFM56–5C SB No. 72–350, Revision 1, dated January 30, 1998, as applicable.

(h) For the purposes of this AD, a serviceable part is defined as an AGB starter gearshaft, Part Number (P/N) 335–302–503–0, a TGB assembly, P/N 335–300–012–0, a TGB input bevel gear, P/N 335–321–008–0, a TGB output bevel gear, P/N 335–322–405–0, AGB gearshaft cluster spur assembly, P/N 335–302–503–0, or an AGB intermediate gear assembly, P/N 335–303–202–0, not

identified by part serial number in Table 1 of the applicable SB noted in the Applicability Section of this AD.

(i) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(j) The actions required by this AD shall be accomplished in accordance with the following CFMI service documents:

Document No.	Page	Revision	Date
CFM56–3/–3B/–3C ASB No. 72–A861 Total Pages: 10	1–10	3	Dec. 3, 1997.
CFM56–3/–3B/–3C SB No. 72–863 Total Pages: 39	1–39	1	Nov. 18, 1997.
CFM56–3/–3B/–3C SB No. 72–865 Total Pages: 8	1–8	Original	Nov. 18, 1997.
CFM56–3/–3B/–3C SB No. 72–867 Total Pages: 11	1–11	Original	Nov. 28, 1997.
CFM56–3/–3B/–3C SB No. 72–873 Total Pages: 21	1–21	1	Feb. 5, 1998.
CFM56–5 SB No. 72–523 Total Pages: 33	1–33	1	Jan. 30, 1998.
CFM56–5B SB No. 72–211 Total Pages: 28	1–28	1	Jan. 29, 1998.
CFM56–5C SB No. 72–350 Total Pages: 28	1–28	1	Jan. 30, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2981, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment supersedes telegraphic AD T97–25–51, issued December 4, 1997.

(l) This amendment becomes effective on June 3, 1998.

Issued in Burlington, Massachusetts, on May 7, 1998.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–12916 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–263–AD; Amendment 39–10530; AD 98–11–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that currently requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item, and repair of cracked structure. That AD was prompted by a structural re-evaluation by the manufacturer that identified additional structural elements where, if damage were to occur, supplemental inspections may be required for timely detection. This amendment requires additional and expanded inspections, and repair of cracked structure. This amendment also expands the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to ensure the continued structural integrity of the entire Boeing Model 727 fleet.

DATES: Effective June 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Washington; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 84–21–05, amendment 39–4920 (49 FR 38931, October 2, 1984), which is applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on May 29, 1997 (62 FR 29081). That action proposed to supersede AD 84–21–05 to continue to require that the FAA-approved maintenance program be revised to include inspections that will give no less than the required damage tolerance

rating for each Structural Significant Item (SSI). That action also proposed to require additional and expanded inspections, and repair of cracked structure. In addition, that action proposed to expand the applicability of the existing AD to include additional airplanes. [A similar proposal applicable to all Boeing Model 737 series airplanes also was published in the **Federal Register** on August 7, 1997 (62 FR 42433).]

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the two NPRM's discussed previously (i.e., Docket No.'s 96–NM–263–AD and 96–NM–264–AD). Because in most cases the issues raised by the commenters are generally relevant to both NPRM's, each final rule includes a discussion of all comments received.

Two commenters support the proposed rule.

Delete Repairs and Type Certificate Holder Modifications

Several commenters request that, for the reasons stated below, the FAA delete the requirements that address repairs and Boeing modifications (i.e., modifications specified in service bulletins or other technical data issued by Boeing), as specified in paragraphs (d) and (f) of the proposed AD.

Several commenters contend that the intent of the Boeing Supplemental Structural Inspection Program (SSIP) was to evaluate the original structure of candidate fleet airplanes using the latest damage tolerance methods, not to bring all airplanes up to damage tolerance design. They note that the Boeing Supplemental Structural Inspection Document (SSID) explicitly excluded SSI's that had been modified or repaired, because they were no longer considered to be representative of the configuration of the fleet. One of these commenters also states that Boeing should retain the authority to determine whether repaired SSI's are representative.

The FAA infers that the commenters believe that the purpose of the SSIP for Boeing airplanes is limited to protecting the original airplane structure. As discussed in the notice of proposed rulemaking (NPRM), FAA Advisory Circular (AC) No. 91–56, Change 2, dated April 15, 1983, states that assessments should be accomplished on modified or repaired structure to determine whether special inspections are needed to ensure continued airworthiness, regardless of whether the structure continues to be ''representative'' of the original structure. Consistent with this policy, the FAA has previously issued other SSIP AD's that effectively require assessment of repairs and modifications:

- For McDonnell Douglas Model DC–8 series airplanes: AD 93–01–15, amendment 39–8464 (58 FR 5576, January 22, 1993);
- For McDonnell Douglas Model DC–9 series airplanes: AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996); and
- For McDonnell Douglas Model DC–10 series airplanes: AD 95–23–09, amendment 39–9429 (60 FR 61649, December 1, 1995). One of the purposes of this AD is to correct this deficiency in the Boeing SSIP. The commenters have not provided any information to call this basic policy into question. The FAA finds that repaired or modified SSI's should be included in the Boeing SSIP to ensure timely detection of cracking in those areas. Boeing does retain the authority to determine whether repaired or modified SSI's are ''representative,'' but that determination will no longer have the effect of deleting repaired or modified SSI's from the Boeing SSIP.

Several commenters also state that, in consideration of their request to delete repaired SSI's or Boeing modifications from the SSIP, reducing the inspection thresholds specified in the proposed AD would offset the FAA's concern regarding the reduction in the number of inspected SSI's. One of these commenters suggests that the FAA reduce the inspection thresholds specified in the proposed AD by an incremental amount to increase the inspected fleet by 10 percent. Such a reduction would compensate for the subject deletions. Another commenter states that lowering the threshold would require less time and lower labor costs than that required to develop special inspections for repairs and modifications. The FAA does not concur. As discussed previously, the purpose of the SSIP is to ensure the continued airworthiness of all airplanes, including those that have been repaired or modified. The commenters' proposal would not achieve this objective.

In contrast to the previous comments, several commenters state that SSI's affected by standard repairs or Boeing modifications do not need to be included in the Boeing SSIP, because the original structure is ''representative'' of the durability of repaired or modified structure. The FAA does not concur. Although repaired or modified structure may be similar to original structure, operators must accomplish an assessment to determine if the inspection program specified in the SSID is effective. It should be noted that, if the assessment indicates that the applicable inspection specified in the SSID is effective, no change to the Boeing SSIP is required.

Several commenters state that paragraphs (d) and (f) of the proposed AD are unnecessary because other airworthiness programs and documents, such as the proposed repair assessment program (RAP) for pressurized fuselages, will require operators to assess repairs and modifications. [The FAA has issued Notice No. 97–16, Docket No. 29104 (63 FR 126, January 2, 1998) that would require operators of certain transport category airplanes, including the Model 727, to adopt RAP's into their maintenance or inspection programs.] Two of these commenters state that the 727 Structures Task Group (STG) (a group consisting of 727 operators and Boeing) has taken the position that only repairs to the fuselage skins and pressure webs need to be assessed for damage tolerance, not repairs to other areas of the airplane structure (e.g., wing and empennage SSI's).

For two reasons, the FAA does not concur that the proposed RAP is adequate to address potential fatigue cracking of modified or repaired SSI's. First, the proposed RAP does not address either the damage tolerance characteristics of SSI's in supplemental type certificate (STC) modified structure that has not been repaired, or the effects of such modifications on original SSI's.

Second, the FAA does not concur with the commenters that only the pressure boundary should be subject to a damage tolerance assessment. The STG's conclusion that only repairs to the pressure boundary need to be assessed is based on a small sampling of existing repairs and on an assumption that those repairs are representative of all repairs. This approach would not give any consideration to repairs that are internal to the fuselage skin, or repairs to the wings or empennage. The FAA is aware that a significant number of these types of repairs have been installed on Model 727 airplanes, and that these repairs have not been assessed, to the extent practicable, in accordance with the principles of the current damage tolerance standards (14 CFR 25.571, Amdt. 25–45). For those repairs that affect SSI's, the failure of which could be catastrophic, reliance on an assumption that these repairs are free of fatigue cracking is inappropriate.

Therefore, reliance on the proposed RAP is inconsistent with the policy of AC No. 91–56, which does not draw a distinction between original structure and modified or repaired structure in describing the need for damage tolerance assessments of SSI's to ensure the structural integrity of the airplane. As discussed in the NPRM, the FAA continues to consider that appropriate damage tolerance based inspections are a necessary means to ensure long-term structural integrity of all SSI's, including those that have been modified or repaired. It should be noted that this AD and the proposed RAP are complementary for the structure associated with fuselage skins and pressure webs. Compliance with the SSID may be facilitated by use of the repair assessment guidelines developed in conjunction with the proposed RAP; and, assuming that the FAA adopts the proposed RAP, compliance with this AD will facilitate compliance with the requirements of the proposed RAP.

One commenter states that the existing Corrosion Prevention and Control Program (CPCP), in concert with the proposed RAP, makes the inspections specified in the proposed AD unnecessary and redundant. In addition, this commenter states that the CPCP requires 100 percent (visual) inspections of all SSI's, including repaired or modified SSI's.

The FAA does not concur. The relationship of this AD to the proposed RAP is discussed previously. The CPCP AD's require visual inspections to detect corrosion of SSI's. In contrast, the SSIP AD's require various inspection methods (e.g., visual, eddy current, ultrasonic) to detect fatigue cracks in SSI's. Because the purposes of the two programs are different, in many cases, the corrosion inspections would not be adequate to detect fatigue cracking. In conclusion, the FAA has determined that the Boeing SSIP is necessary to maintain the airworthiness of the Boeing Model 727 fleet, and that it is not redundant with the proposed RAP and CPCP.

Extend Compliance Time for Assessing Existing Repairs and Boeing Modifications

Several commenters request that the FAA revise paragraph (d) of the proposed AD to extend the compliance time of 18 months for existing repairs and Boeing modifications. The commenters state that repairs and Boeing modifications are likely to have fatigue characteristics that are similar to the original structure and, therefore, are not of immediate concern. These commenters also state that compliance within 18 months would cause an undue burden on operators because of the size of the fleet, the number of repairs and modifications on each airplane that would need to be identified and evaluated, the difficulty of accessing the affected structure, and the total number of work hours necessary to comply with the requirement. The commenters state that, because the purpose of the inspections is to identify potential unsafe conditions, rather than address known unsafe conditions, the level of effort necessary to comply within 18 months is unjustified. One commenter states that there is a shortage of sufficiently trained personnel to develop necessary non-destructive test (NDT) procedures to conduct the required inspections within the proposed compliance time. Another commenter proposes that operators be able to address repairs during the required SSID inspections.

The FAA concurs that an extension of the compliance time is appropriate. The FAA agrees that Boeing repairs and modifications are likely to have fatigue characteristics that are similar to the original structure and, therefore, are not of immediate concern. For other repairs, although their fatigue characteristics may be different, the FAA recognizes that the records and data necessary to identify and evaluate these repairs may not be readily available.

Therefore, the FAA has revised the final rule to include a new paragraph (e) to specifically address repairs and design changes other than STC's. Operators are required to identify each repair or design change to an SSI at the time of the first inspection of each SSI after the effective date of the AD in accordance with Revision H of the SSID. Within 12 months after such identification, operators are required to assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI. This change will enable operators to identify these repairs and modifications at the time of the required SSID inspection, so that no additional inspections will be necessary. This change also will allow for the timely development of NDT procedures. The requirement to revise the maintenance or inspection program within 12 months after identification of each repair or design change is consistent with both the guidance of AC No. 25–1529–1, dated August 1, 1991, and the long-standing practice under the McDonnell Douglas SSIP's.

Evaluation of Existing STC Design Changes

Several commenters state that paragraph (d) of the proposed AD should retain the requirement to revise the maintenance or inspection program to address STC design changes within 18 months after the effective date of this AD. The commenters state that the durability of individual airplanes is affected by STC design changes, which affect existing SSI's and create new SSI's. Thus, the inspection times for these SSI's might need to be revised to account for changes in durability. The commenters also state that the STC documentation should be readily available. This would permit a timely paperwork evaluation of the effect on the Boeing SSIP without an extensive airplane inspection. In contrast, another commenter requests an extension of the 18-month compliance time to 5 years for implementing program revisions for addressing STC's. This commenter notes that STC holders are not equipped to perform the assessments of affected SSI's.

The FAA concurs partially. Although most of these commenters support the proposed requirements of paragraph (d) for STC design changes, the FAA has revised paragraph (d) of the final rule to limit its applicability to airplanes on which STC's have been incorporated, and to provide an option that would extend the compliance time for identifying and evaluating SSI's created or affected by STC's and revising the maintenance or inspection programs to reflect those evaluations. The FAA has recently reviewed several STC's regarding the installation of cargo doors on 727 airplanes and determined that the substantiating data for many of these STC's do not include internal loads data. Without the internal loads data for the modified structure, it would be difficult to perform an adequate damage tolerance assessment.

In accordance with the guidance provided in AC No. 91–56, external (flight, pressure, and ground) loads are necessary to complete a structural damage tolerance assessment and must be obtained from the type certificate (TC) holder or be developed by another source. Those external loads must then be applied to the structure and resolved into an internal distribution within the STC structural components (this includes original structure that is not modified but could be affected by the STC design change). All STC structural parts, whose failure could reduce the structural integrity of the airplane, then

must be identified (as SSI's), and a damage tolerance assessment must be performed. Subsequently, the inspection methods compliance times (i.e., thresholds and repetitive intervals) must be developed for these SSI's and added to the operator's maintenance or inspection program. Therefore, the FAA has determined that operators may need more time to assess STC design changes on their airplanes.

To avail themselves of the option of extending the 18-month compliance time, operators are required to accomplish the following three actions:

1. Within 18 months after the effective date of this AD, submit a plan to ensure that they are developing data, as described above, that supports their revision to the FAA-approved maintenance or inspection program (i.e., compliance times and inspection methods for new or affected SSI's), and to demonstrate that they are able to complete the required tasks within 48 months after the effective date of this AD.

2. Within 18 months after the effective date of this AD, and thereafter at intervals not to exceed 18 months, accomplish a detailed visual inspection of all structure identified in Revision H of the SSID that has been modified in accordance with an STC (this repetitive inspection will be terminated by accomplishment of the third action). The detailed visual inspection and the repair of any crack shall be accomplished in accordance with a method approved by the Manager of the Seattle Aircraft Certification Office (ACO).

3. Within 48 months after the effective date of this AD, revise the maintenance or inspection program to include an inspection method for each new or affected SSI and to include the compliance times for initial and repetitive accomplishment of these inspections.

The plan that an operator submits to the FAA for approval should include a detailed description of the: (1) STC; (2) methodology for identifying new or affected SSI's; (3) method for developing loads and validating the analysis; (4) methodology for evaluating and analyzing the damage tolerance characteristics of each new or affected SSI (see discussion below); and (5) proposed inspection methods. The plan would not need to include all of these elements if the operator can otherwise demonstrate that its plan will result in implementation of an acceptable program within 48 months after the effective date of this AD. For this option, the final rule requires that the plan be submitted to the Manager of the Seattle ACO within 18 months after the effective date of the AD.

As indicated by the commenters, STC modifications may pose a greater risk of fatigue cracking than standard repairs or Boeing modifications. However, STC holders normally do not have access to Boeing type certification data. Therefore, STC modified structure may not have the same durability as the original structure or structure that has been subject to standard repairs or Boeing modifications. In order to ensure the structural integrity of STC modified structure during the 48-month compliance time provided for the development of a revision of the maintenance or inspection program to address STC's, the FAA considers it necessary to require repetitive detailed visual inspections of that structure.

These visual inspection methods are required to be approved by the Manager of the Seattle ACO to ensure that adequate access is provided and that the inspection area is adequately defined. In addition, the repair of any crack must be approved by the Manager of the Seattle ACO. This contrasts with the repair provision of paragraph (f) of the final rule, which requires that cracks be repaired in accordance with any FAA-approved method. Seattle ACO approval for these repairs is necessary because, as discussed previously, the durability of these STC's is unknown, and findings of cracks may indicate the need for additional corrective action. The FAA has revised paragraph (f) of the final rule to reference the ACO approval as an exception to the general provisions allowing repairs in accordance with an FAA-approved method. The FAA selected an 18-month inspection interval to coincide with most operators' normal maintenance schedules. It should be noted that these visual inspections would not be required for operators who adopt a damage tolerance based revision to the maintenance or inspection program to address STC modifications within 18 months after the effective date of this AD, as proposed in the NPRM.

One commenter also requests that the FAA develop guidelines to assist operators in assessing STC's. The FAA does not consider that there is a need for further guidance at this time. As discussed previously, AC No. 91–56 provides extensive guidance on methods for assessing the airplane structure using damage tolerance principles to the extent practicable. This guidance is also applicable to STC's.

Revise Compliance Time To Assess Future Repairs and Modifications

Several commenters concur with the requirements of paragraph (f) of the proposed AD.

Several other commenters request that paragraph (f) be revised to extend the compliance time for assessment of repairs and modifications installed after the effective date of this AD. Rather than completing a damage tolerance assessment within 12 months after installation of the repair or modification, as proposed in the NPRM, these commenters suggest that operators should be required to complete an assessment within 12 months after accomplishment of the next SSID inspection of the SSI following such an installation.

The FAA does not concur. The FAA has determined that delaying the assessment until after the next SSID inspection is not appropriate. At the time of the installation, operators have all the data necessary to define the repair or modification that would be used in an assessment. Delaying the assessment until after the subsequent SSID inspection may result in loss of these data. Requiring an assessment within 12 months after installation of the repair or modification provides sufficient time and ensures that the inspection program accurately reflects the actual airplane structure. As stated previously, the requirement to revise the maintenance or inspection program within 12 months after installation is consistent with both the guidance of AC No. 25–1529 and the long-standing practice under the McDonnell Douglas SSIP's.

Clarify What ''Affected'' Means

One commenter requests clarification of the meaning of the word ''affected'' in paragraphs (d) and (f) of the proposed AD. The commenter states that the definition provided in the proposed AD is vague. As an example, the commenter states that it was not clear whether an operator needs to obtain a new inspection method and threshold or interval for a corrosion blend-out repair that does not include a doubler to reinforce the structure.

The FAA concurs that clarification is necessary. As defined in paragraphs (d) and (f) of the proposed AD, the term ''affected'' means that an SSI has been changed such that the original structure has been physically modified or that the loads acting on the SSI have been increased or redistributed.

For existing altered or repaired SSI's, the FAA has determined that it is evident when an SSI is ''affected''

because of a physical change to the structure. For existing changes where the loads acting on the SSI have been increased or redistributed, the FAA has determined that it may not be readily evident that an SSI is ''affected'' because there has not been a physical change to the structure. Because of this, it may not be possible for operators to identify all ''affected'' SSI's without performing a damage tolerance assessment. For these reasons, the FAA has changed paragraph (d) to require identification of structure that has been ''physically altered,'' rather than ''affected,'' in accordance with an STC; and has added a new paragraph (e) to require identification of other structure that has been ''physically altered or repaired.''

In the cited example of a corrosion blend-out to an SSI not requiring reinforcement, the operator would be required to assess whether the repair reduced the effectiveness of the original SSID inspection method and repetitive interval. However, a blend-out would not normally reduce the effectiveness of the original inspection method, because the structure is essentially unchanged. The repetitive interval would continue to be appropriate because the blend-out would not appreciably affect the durability of the structure.

After the effective date of this AD, when SSI's are altered or repaired or when the loads acting on an SSI are increased or redistributed, it should be evident to the operator that SSI's are ''affected.'' The FAA has determined that, at the time of the installation, operators should have all the data necessary to define the repair or modification that would be used in an assessment. For this reason, the FAA has determined that the word ''affected'' in paragraph (g) [proposed paragraph (f)] is appropriate.

If an SSI is determined to be ''affected,'' an operator must perform an assessment of the damage tolerance characteristics of the SSI to determine the effectiveness of the applicable SSID inspection for that SSI. It is only if that inspection is determined not to be effective that the operator must revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for that SSI. Accordingly, the FAA has revised paragraph (d)(1) of the final rule [which corresponds to paragraph (d) of the proposed AD as it applied to STC modified structure] to require the operator to assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI. If it is not effective, the operator is required to revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI. The FAA will monitor operators' compliance with these provisions to determine whether future revisions to this AD are necessary to fulfill the intent of AC No. 91–56.

Threshold for STC Modified Airplanes

One commenter questions whether airplanes that have been converted from a passenger configuration to an all-cargo configuration by the STC process are subject to the requirements of paragraph (c)(1) or (c)(2) of the proposed AD. The commenter's concern appears to result from the fact that, when some passenger airplanes were converted to cargo airplanes, the modifier revised the airplane records to reflect a different model number (e.g., a –200 may be reidentified as –200C). The FAA's intent is that the references to model numbers in the AD correspond to the model numbers specified on the type certificate data sheet (TCDS). Because these converted airplanes are neither identified as Model 727–100C nor Model 727–200F series airplanes on the TCDS, paragraph (c)(1) does not apply, and (c)(2) does. As discussed previously, for SSI's altered by the conversion, operators also must consider the provisions of paragraph (d) of this AD, which require a damage tolerance evaluation to determine what structure needs to be inspected, what inspection methods are needed, and when the inspections are to occur. The FAA has revised the final rule to include a new NOTE following paragraph (c)(1) that clarifies this point.

Candidate Fleet Approach

One commenter suggests that the FAA delete the threshold approach defined in paragraph (c) of the proposed AD and retain the candidate fleet approach defined in AD 84–21–05 and the SSID. The commenter proposes that the candidate fleet be updated annually to reflect changes in the fleet (e.g., when an airplane is modified from a passenger configuration to a cargo configuration).

The FAA does not concur. As stated in the NPRM, the policy established in AC No. 91–56 anticipated that all SSIP's would establish thresholds. The candidate fleet approach was originally based on an understanding that the airplanes in the candidate fleet would continue to represent the entire fleet and would have the highest number of flight cycles in the fleet. This would be achieved by periodic updates to the candidate fleet. In practice, this approach has not fulfilled the intent of AC No. 91–56. Because of the extensive modifications and repairs of both candidate fleet airplanes and non-candidate fleet airplanes, the candidate fleet is no longer representative.

In addition, the FAA finds that the candidate fleet no longer includes all of the highest time airplanes in the fleet. Even if the SSID were updated annually to reflect changes to the fleet, this approach would be impractical for both operators and the FAA. Because of the frequency of modifications and changes in utilization of the affected airplanes, even annual updates would quickly be rendered obsolete. Annual changes in the composition of the candidate fleet would deprive operators of the predictability needed for long-term maintenance planning provided by the approach of defining the thresholds as adopted in this AD. For these reasons, the FAA has determined that the 727 SSIP must contain inspection thresholds for all Model 727 series airplanes to ensure the timely detection of fatigue cracks in the SSI's.

Extend Compliance Time for Revising the Maintenance or Inspection Program

Several commenters request that the compliance time of 12 months in paragraph (b) of the proposed AD be extended to provide operators more time to incorporate Revision H of the SSID into their FAA-approved maintenance or inspection program. These commenters state that an operator should not be required to revise its FAA-approved maintenance or inspection program to incorporate Revision H of the SSID until its airplanes are at or near the threshold specified in paragraph (c) of the proposed AD. The commenters state that, as paragraph (b) of the proposed AD is currently worded, all operators are required to incorporate the change regardless of the cycle age of an airplane. This requirement poses an undue burden (cost and time) to those operators that are not required to inspect until much later. Several other commenters also state that the safety of the fleet is not increased by requiring incorporation of Revision H of the SSID into an inspection program on low-cycle airplanes.

The FAA concurs with the commenters' requests to extend the compliance time of paragraph (b) to prior to reaching the threshold specified in paragraph (c) of the AD, or within 12 months after the effective date of this AD, whichever occurs later. The FAA has revised the final rule accordingly. However, as discussed previously in this AD, operators are required to comply with the requirements of

paragraphs (d) and (g) of this AD, which may necessitate action before reaching the threshold.

Extend Grace Period for Initial Inspections

Several commenters request that the 18-month grace period specified in paragraph (c) of the proposed AD be extended to provide operators that are near or over the threshold more time to accomplish the initial inspection. Many inspections included in the SSID require several work hours to accomplish. These commenters point out that the proposed AD allows 12 months to implement Revision H of the SSID, but allows only 6 months thereafter to accomplish inspections (18 months total from the effective date). The commenters contend that accomplishment of all the inspections within the 18-month grace period will significantly affect an operator's planned maintenance schedule and program, especially operators of large fleets.

Several of these same commenters state that the original SSID AD 84–21–05 permitted the initial compliance time to be the repeat interval (after incorporation of the revision into a maintenance or inspection program). Several commenters also state that other AD's that mandate maintenance type programs, such as the CPCP for aging airplanes, give operators one repeat interval to come into compliance; therefore, the initial inspection should be similar in concept to such maintenance type programs (i.e., the grace period should be 18, 36, 48, 60, and 72-month intervals depending on the inspection).

One commenter states that no service, test, or engineering analysis could justify the inspection of new SSI's within 18 months. Another commenter states that the approach used in the proposed AD appeared to be the same as for a service bulletin with a known fatigue problem. This commenter also states that this approach was not appropriate for damage tolerance based inspections contained in the Boeing SSID, which are exploratory inspections and are not intended to address identified problems. Another commenter states that the SSID threshold is somewhat arbitrary, because it is based on a reliability analysis rather than a true fatigue analysis. The threshold is derived from calculations that ensure that a statistically accurate representation of the fleet is being inspected, rather than a true crack growth analysis. One of these commenters suggests that the grace period be based on flight cycles instead of calendar time because the SSID addresses structural fatigue. Several commenters state that a major maintenance check would be a more appropriate grace period for accomplishing the inspections specified in the SSID.

The FAA concurs that more time should be provided to accomplish the initial inspections specified in paragraph (c) of the proposed AD. However, the FAA does not concur that the grace period should be tied to the repeat interval established in the Boeing SSID because some of the repeat inspections have extremely long compliance times. The existing Boeing SSID is not like the CPCP document which establishes an initial compliance time (threshold) within the document. As discussed in Item 3. of the ''Action Since Issuance of Previous AD'' Section of the NPRM, the FAA has determined that a grace period based on a repeat interval does not ensure that the SSI inspections are accomplished, and that fatigue cracks in SSI's are detected, in a timely manner.

The FAA finds that it would be appropriate to base the grace period on the number of accumulated flight cycles rather than calendar time, because the Boeing SSIP is based on fatigue and crack-growth analyses. In addition, the FAA concurs that the grace period should begin at the time when operators are required to have revised their maintenance or inspection programs to incorporate Revision H of the SSID. The FAA has determined that such a grace period would provide operators with more time to accomplish the inspection; yet it also would ensure that the SSI inspections are accomplished, and that fatigue cracks in SSI's are detected, in a timely manner. As a result, the FAA has revised the final rule to specify a grace period of 3,000 flight cycles measured from the date 12 months after the effective date of the AD. The 3,000-flight cycle grace period corresponds to a typical maintenance interval for most operators and, therefore, minimizes the need for special maintenance scheduling.

Modify Criteria for Adjusting the Threshold

Several commenters request that the criteria for adjusting the thresholds specified in paragraph (c) of the proposed AD (discussed in Item 3. of the ''Actions Since Issuance of Previous AD'' Section of the NPRM) should allow for the threshold to be reasonably adjusted. These commenters suggest that the FAA allow operators to use the rate of risk methodology to extend the threshold in the future.

The FAA concurs. The rate of risk methodology is a means of determining the probability that cracks will be detected in the inspected fleet before they initiate on other airplanes that have not been inspected. As discussed in the NPRM, in accordance with paragraph (i)(1) of the final rule, the FAA would approve threshold increases if it can be shown by sufficient data that the increase in the threshold does not result in an increased risk that damage will occur in the uninspected fleet before it is detected in the inspected fleet.

Some of these commenters state that the following statement in the NPRM is unreasonable: ''* * * the FAA may approve requests for adjustments to the compliance time * * * provided that no cracking is detected in the airplane structure.'' Confirmed fatigue cracks should not restrict the ability to adjust the SSIP threshold. The commenters state that the present philosophy for addressing an SSI with a confirmed fatigue crack is to remove that SSI from the SSID and to issue a service bulletin to correct the problem. The FAA then issues an AD to mandate the action, if the FAA deems it necessary. Once this SSI has been removed from the SSID, it should not affect the ability to adjust the SSIP threshold. The FAA concurs. In evaluating requests for extension of thresholds, the FAA would consider whether identified cracking has been addressed in accordance with the philosophy described by the commenters.

One commenter expresses concern that eventually all Model 727 airplanes would be subject to the Boeing SSIP. This commenter suggests that the threshold be defined in the SSID and managed by the STG. The FAA does not concur. As discussed previously, if data are submitted substantiating extension of the threshold, the FAA will approve such extensions, which may have the effect of excepting relatively low-time airplanes. The FAA would be receptive to proposals of threshold extensions from any source that submits sufficient data, including the STG. Because the thresholds are specified in the AD itself, there is no need for the SSID to be revised to incorporate the threshold.

Compliance Time for Initial Inspection

One commenter requests that the compliance time for the initial inspection requirements of paragraphs (c), (d), and (f) of the proposed AD be clarified. The commenter asks if there is anything in the proposed AD that would establish a threshold for inspections other than the 46,000-flight cycle compliance time specified in paragraph (c)(1) of the proposed AD. The

commenter states that it has Model 727–100C series airplanes that have accumulated less than 27,000 total flight cycles, but are more than 30 years old.

The FAA finds that no change to the final rule is necessary. The age of an airplane is irrelevant to the inspection threshold. Because the inspections are related to fatigue, only the number of flight cycles that have accumulated on an airplane are relevant to the inspection threshold. If an airplane has been modified, altered, or repaired, such as an STC cargo conversion, the results of an assessment in accordance with either paragraph (d) or (g) of the AD could indicate that the initial inspections are required prior to the thresholds specified in paragraph (c) of the AD.

Limit Applicability of the Transferability Requirement

One commenter concurs with paragraph (g) of the proposed AD, which addresses the inspection schedule for transferred airplanes, provided that it is limited to airplanes that have exceeded the threshold established by paragraph (c)(1) or (c)(2). Paragraph (h) of the final rule [proposed paragraph (g)] is limited as stated by the commenter, and paragraph (h) is adopted as proposed.

Clarification of FAA-Approved Method

One commenter requests that paragraph (e) of the proposed AD be clarified so that there is no confusion regarding the level of FAA approval required for repairs to SSI's. The commenter states that it interprets paragraph (e) to mean that any Designated Engineering Representative (DER) with delegated authority would still have the authority to approve repairs to SSI's based on a static strength analysis. The commenter also interprets that an operator would have 12 months after the repair to develop an alternative inspection plan, or to demonstrate that the existing inspection program provides an acceptable level of safety.

The commenter is correct that DER's still have the authority to approve repairs to SSI's based on a static strength analysis. Except as discussed under the heading ''Evaluation of Existing STC Design Changes,'' paragraph (f) of the final rule [proposed paragraph (e)] is unchanged from the corresponding paragraph of AD 84–21–05. The commenter also is correct that operators are allowed 12 months after installation of the repair to revise their FAA-approved maintenance or inspection program to include new inspections for the affected SSI's. The new inspection method and compliance times must be approved by the Manager of the Seattle ACO.

Delegate Approval Authority to DER's

Several commenters request that the FAA delegate approval authority to the DER's to approve new inspections and compliance times specified in paragraphs (d) and (f) of the proposed AD. These commenters state that this delegation would decrease the time required to obtain such approvals. These commenters question whether the FAA will be able to process a substantial number of requests that will be generated because of the proposed AD. This question arises from one commenter's past experience with the CPCP in which the approval process took a long period of time.

In the broader context of delegation of AD required approvals, the FAA has recently issued guidance on this subject and will be implementing this guidance in the near future. Because this request may be accommodated through FAA management of designees, no revision to the final rule is needed.

Credit for Previous Inspections

Several commenters request that paragraph (c) of the proposed AD positively reflect that an operator is in compliance if inspections have been accomplished in accordance with Revision H of Boeing Document No. D6–48040–1 prior to the effective date of the AD. These commenters state that paragraph (c) of the proposed AD is not clear with regard to whether or not credit is to be given and when the next inspection would be required. These commenters point out that the phrase ''Compliance: Required as indicated, unless accomplished previously,'' as stated in the proposed AD, allows the necessary credit for previously accomplished inspections.

The FAA does not consider that a change to the final rule is necessary. Operators are given credit for work previously performed by means of the phrase in the AD that was referenced by the commenters. In the case of this AD, if the initial inspection has been accomplished prior to the effective date of this AD, this AD does not require that it be repeated. However, the AD does require that repetitive inspections be conducted thereafter at the intervals specified in the Boeing SSID, and that other follow-on actions be accomplished when indicated.

Further FAA/Industry Discussions

Several commenters request that the FAA have further discussions with Boeing, operators, and other regulatory agencies prior to issuing the final rule because the proposed AD reflects a major change in FAA policy and extends well beyond the original concept of the Boeing SSIP. The FAA does not concur. As discussed in the NPRM and the preceding discussion of comments, this AD is consistent with the FAA's long-standing policy, as expressed in AC No. 91–56. As demonstrated by the breadth and depth of comments received, the public has had an ample opportunity to comment on the merits of the proposal.

Cost Estimate

Several commenters request that the FAA revise the Cost Impact information of NPRM Docket No. 96–NM–263–AD (for Model 727 airplanes) and NPRM Docket No. 96–NM–264–AD (for Model 737 airplanes) to accurately reflect the costs associated with accomplishing the requirements of both proposed AD's.

One commenter states that all affected 737 airplanes worldwide should be included in the cost estimate in NPRM Docket No. 96–NM–264–AD. The FAA does not concur. Airworthiness directives that are issued by the FAA directly affect only U.S.-registered airplanes; therefore, the cost estimate in an AD is limited only to U.S.-registered airplanes.

Several commenters to NPRM Docket No. 96–NM–263–AD (applicable to Model 727 airplanes) state that 1,030 Model 727 airplanes (U.S.-registered) are affected by the proposed AD, not just 74 airplanes, as specified in the NPRM. One of these commenters states that the cost estimate in the NPRM does not reflect the cost for all 727 operators to incorporate Revision H of the SSID into an FAA-approved maintenance or inspection program. Similarly, several commenters also state that the cost estimate in NPRM Docket No. 96–NM–264–AD does not reflect comparable costs for all 737–100 and –200 airplanes.

The FAA concurs with the commenters in that the NPRM proposed that every affected U.S. operator must revise their maintenance or inspection programs to incorporate Revision H (for Model 727 airplanes) or Revision D (for Model 737 airplanes) of the SSID within 12 months after the effective date of the applicable AD. As discussed previously under the heading ''Extend Compliance Time for Revising the Maintenance or Inspection Program,'' the FAA has revised both final rules so that the maintenance or inspection program revision is only required for any airplane prior to its reaching the applicable threshold.

In addition, the FAA has revised the Cost Impact information of this final rule to address a total of 1,001 airplanes, which includes 223 airplanes (35 operators) that are estimated to exceed the thresholds specified in the AD within the next 10 years. For Final Rule Docket No. 96–NM–264–AD, the FAA also has revised the Cost Impact information to address a total of 404 airplanes, which includes 158 airplanes (39 operators) that are estimated to exceed the thresholds specified in the AD within the next 10 years. As discussed previously under the heading ''Modify Criteria for Adjusting the Threshold,'' if sufficient substantiating data are submitted to justify extending the threshold, the FAA will grant such extensions so that the operators of some relatively low utilization airplanes may never be required to revise their maintenance or inspection program to incorporate the SSIP.

One commenter estimates that it will take 1,700 work hours per airplane (for Model 727 airplanes) to identify previously installed repairs, which will require at least 10 days of downtime to survey each airplane at a total cost to the commenter of $8.9 million. This commenter also estimates that its cost due to lost revenue would be $10.2 million, for a total cost of $19.1 million over 6 months (identification and lost revenue). This commenter further estimates that it will cost $110.5 million to survey existing repairs on all 727 airplanes.

Another commenter estimates that it will cost $240 million to accomplish the initial inspection to determine if there are existing repairs on the 727 airplanes. This task will take over 4,000 work hours per airplane to accomplish (2,000 work hours to open and close; 500 work hours to inspect, map, assess, etc.; and 1,500 work hours to complete non-routines generated by this special inspection).

Similar comments were submitted to NPRM Docket No. 96–NM–264–AD; however, the commenters did not provide specific cost figures for performing assessments on existing repairs.

As discussed under the heading ''Extend Compliance Time for Assessing Existing Repairs and Boeing Modifications,'' the FAA has revised both final rules to postpone the requirement to assess existing repairs of SSI's until after the applicable SSID inspection. This revision eliminates the need for any special inspection in order to comply with the requirement to assess repairs.

Several commenters also state that the cost estimate in the NPRM's did not reflect the costs of developing inspection programs for repairs and Boeing modifications that are installed prior to the effective date of the AD. The FAA concurs and has revised the Cost Impact information of both final rules to include (within the total costs) $258,000 per airplane over the next 10 years to account for these costs.

Several commenters assert that the cost of the proposed AD is over $100 million, which is more than 20 times the FAA's estimate in NPRM Docket No. 96–NM–263–AD (for Model 727 airplanes). As discussed below in the Cost Impact information, the FAA estimates that the total cost over the next 10 years associated with this final rule is $137,734,800, or an average of $13,773,480 per year. The FAA also estimates that the highest total cost during any one of the next 10 years associated with this final rule is $24,938,400. The difference between these estimates is at least in part attributable to the changes in the final rule discussed previously, which provide significant relief to operators. (Similar comments were submitted to NPRM Docket No. 96–NM–264–AD; however, the commenters did not provide a total cost estimate for these actions.)

Additional Clarifications

In reviewing the comments submitted to the NPRM, questions arose regarding the relationship of the inspection threshold requirements of paragraph (c) of the proposed AD and the provisions of the Boeing SSID that allow for sampling of specified percentages of the affected fleet. As explained in the NPRM, the FAA's intent in paragraph (c) is to require that all airplanes that exceed the threshold be inspected in accordance with the Boeing SSID. To the extent that there is any potential for conflict between paragraph (c) and the Boeing SSID, the provisions specified in this AD would prevail. Therefore, even if Revision H would permit operators to omit inspections of SSI's based on a sampling approach, this AD requires that those inspections be performed on all airplanes exceeding the specified thresholds. The FAA has revised the final rule to include a new NOTE following paragraph (c) to clarify this point.

Similarly, the FAA notes that paragraph (b) of the proposed AD would have required that the revision to the maintenance or inspection program include certain SSID provisions that were proposed to be overridden by other paragraphs of the proposed AD. The FAA has revised the requirements of paragraph (b) to clarify that the AD overrides these SSID provisions.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,516 Boeing Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,001 airplanes of U.S. registry and 113 U.S. operators (over 10 years) will be affected by this AD.

Incorporation of the SSID program into an operator's maintenance or inspection program, as required by AD 84–21–05, takes approximately 1,000 work hours (per operator) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost to the 37 U.S. affected operators of incorporating the revised procedures (specified in Revision E of the SSID) into the maintenance or inspection program is estimateto be $2,220,000, or $60,000 per operator.

The recurring inspections, as required by AD 84–21–05, take approximately 500 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the recurring inspection cost to the 281 U.S.-registered candidate fleet airplanes is estimated to be $8,430,000, or $30,000 per airplane, per inspection cycle.

The incorporation of Revision H of the SSID into an operator's maintenance or inspection program, as required by this new AD, takes approximately 1,200 work hours (per operator) to accomplish, at an average labor rate of $60 per work hour. The FAA estimates that within 10 years, 35 operators will be required to incorporate Revision H of the SSID. Based on these figures, the cost to the 35 U.S. affected operators of incorporating the revised procedures (specified in Revision H of the SSID) into the maintenance or inspection program is estimated to be $2,520,000, or $72,000 per operator.

The recurring inspections, as required by this new AD, take approximately 600 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The FAA estimates that after 10 years, 35 operators will be required to inspect

201 airplanes and assess the damage tolerance characteristics of each repaired SSI or each SSI that is physically altered by an existing design change other than an STC. The cost impact of this inspection and assessment required by this AD on U.S. operators is estimated to be $86,742,000 over 10 years, or an average of $43,155 per airplane, per year. During the 10 years, the FAA also conservatively estimates that 113 operators of 899 airplanes will be required to assess the damage tolerance characteristics of each SSI on which the structure identified in Revision H of the SSID has been physically altered in accordance with an STC prior to the effective date of this AD. The cost impact of this assessment required by this AD on U.S. operators is estimated to be $42,000,000 over 10 years, or an average of $4,672 per airplane, per year.

In summary, the FAA estimates that the actions, as required by this new AD, will cost $137,734,800 over 10 years, or an average of $13,773,480 per year. The FAA also estimates that the average cost per airplane over 10 years is $153,209, or an average of $15,321 per year. The highest total cost during any one of the 10 years is $24,938,400. (The FAA has included in the Rules Docket a detailed description of cost estimates related to the actions required by this AD.)

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, it can reasonably be assumed that the majority of the affected operators have already initiated the original SSID program (as required by AD 84–21–05), and many may have already initiated the additional inspections required by this new AD action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4920 (49 FR 38931, October 2, 1984), and by adding a new airworthiness directive (AD), amendment 39–10530, to read as follows:

98–11–03 Boeing: Amendment 39–10530. Docket 96–NM–263–AD. Supersedes AD 84–21–05, Amendment 39–4920.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continued structural integrity of the total Boeing Model 727 fleet, accomplish the following:

Note 1: Where there are differences between the AD and the Supplemental Structural Inspection Document, the AD prevails.

(a) For airplanes listed in Section 3.0 of Boeing Document No. D6–48040–1, ''Supplemental Structural Inspection Document'' (SSID), Revision E, dated June 21, 1983: Within 12 months after November 1, 1984 (the effective date of AD 84–21–05, amendment 39–4920), incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in that document. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and shall be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID. This revision shall be deleted following accomplishment of the requirements of paragraph (b) of this AD.

Note 2: For the purposes of this AD, an SSI is defined as a principal structural element that could fail and consequently reduce the structural integrity of the airplane.

(b) Prior to reaching the threshold specified in paragraph (c) of this AD, or within 12 months after the effective date of this AD, whichever occurs later, incorporate a revision into the FAA-approved maintenance or inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6–48040–1, Volumes 1 and 2, ''Supplemental Structural Inspection Document'' (SSID), Revision H, dated June 1994 (hereinafter referred to as ''Revision H''). (The required DTR value for each SSI is listed in the document.) Except as provided to the contrary in paragraphs (c), (d), and (g) of this AD, the revision to the maintenance or inspection program shall include and shall be implemented in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application'' and Section 6.0, ''SSI Discrepancy Reporting'' of Revision H. Upon incorporation of the revision required by this paragraph, the revision required by paragraph (a) of this AD may be deleted.

(c) Except as provided in paragraph (d), (e), or (g) of this AD, perform an inspection to detect cracks in all structure identified in Revision H at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For Model 727–100C and 727–200F series airplanes: Inspect prior to the accumulation of 46,000 total flight cycles, or within 3,000 flight cycles measured from the date 12 months after the effective date of this AD, whichever occurs later.

Note 3: The requirements specified by paragraph (c)(1) of this AD only apply to airplanes listed as 727–100C and 727–200F on the type certificate data sheet. Paragraph (c)(1) does not apply to airplanes that have been modified from a passenger configuration to an all-cargo configuration by supplemental type certificate (STC). Paragraphs (c)(2) and (d) apply to those airplanes.

(2) For all airplanes, except for those airplanes identified in paragraph (c)(1) of this AD: Inspect prior to the accumulation of 55,000 total flight cycles, or within 3,000 flight cycles measured from the date 12 months after the effective date of this AD, whichever occurs later.

Note 4: Notwithstanding the provisions of paragraphs 5.1.1, 5.1.2, 5.1.6(e), 5.1.11, 5.1.12, 5.1.13, 5.2, 5.2.1, 5.2.2, 5.2.3, and 5.2.4 of the General Instructions of Revision H, which would permit operators to perform fleet and rotational sampling inspections, to perform inspections on less than whole airplane fleet sizes and to perform inspections on substitute airplanes, this AD requires that all airplanes that exceed the threshold be inspected in accordance with Revision H.

Note 5: Once the initial inspection has been performed, operators are required to perform repetitive inspections at the intervals specified in Revision H in order to remain in compliance with their maintenance or

inspection programs, as revised in accordance with paragraph (b) of this AD.

(d) For airplanes on which the structure identified in Revision H has been physically altered in accordance with an STC prior to the effective date of this AD: Accomplish the requirements specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Within 18 months after the effective date of this AD, assess the damage tolerance characteristics of each SSI created or affected by each STC to determine the effectiveness of the applicable Revision H inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. Following accomplishment of the revision and within the compliance times established, perform an inspection to detect cracks in the structure affected by any design change or repair, in accordance with the new inspection method. The new inspection method and the compliance times shall be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 6: For purposes of this AD, an SSI is ''affected'' if it has been physically altered or repaired, or if the loads acting on the SSI have been increased or redistributed. The effectiveness of the applicable inspection method and compliance time should be determined based on a damage tolerance assessment methodology, such as that described in FAA Advisory Circular AC No. 91–56, Change 2, dated April 15, 1983.

(2) Accomplish paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD.

(i) Within 18 months after the effective date of this AD, submit a plan that describes a methodology for accomplishing the requirements of paragraph (d)(1) of this AD to the Manager, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181.

Note 7: The plan should include a detailed description of the STC; methodology for identifying new or affected SSI's; method for developing loads and validating the analysis; methodology for evaluating and analyzing the damage tolerance characteristics of each new or affected SSI; and proposed inspection method. The plan would not need to include all of these elements if the operator can otherwise demonstrate that its plan will enable the operator to comply with paragraph (d)(2)(iii) of this AD.

(ii) Within 18 months after the effective date of this AD, perform a detailed visual inspection in accordance with a method approved by the Manager, Seattle ACO to detect cracks in all structure identified in Revision H that has been altered by an STC.

(A) If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 18 months.

(B) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Seattle ACO.

(iii) Within 48 months after the effective date of this AD, revise the FAA-approved maintenance or inspection program to include an inspection method for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. The inspection methods and the compliance times shall be approved by the Manager, Seattle ACO. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of paragraph (d)(2)(ii)(A) of this AD.

Note 8: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision H, which would permit deletions of modified, altered, or repaired structure from the SSIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

(e) For airplanes on which the structure identified in Revision H has been repaired or physically altered by any design change other than an STC identified in paragraph (d), prior to the effective date of this AD: At the time of the first inspection of each SSI after the effective date of this AD in accordance with Revision H, identify each repair or design change to that SSI. Within 12 months after such identification, assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 9: For the purposes of this AD, a design change is defined as any modification, alteration, or change to operating limitations.

(f) Except as provided in paragraph (d)(2)(ii)(B) of this AD, cracked structure found during any inspection required by this AD shall be repaired, prior to further flight, in accordance with an FAA-approved method.

(g) For airplanes on which the structure identified in Revision H is affected by any design change (including STC's) or repair that is accomplished after the effective date of this AD: Within 12 months after that modification, alteration, or repair, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 10: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision H, which would permit deletions of modified, altered, or repaired structure from the SIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

(h) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (c) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established in accordance with paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD, the inspection of each SSI must be accomplished by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, whichever would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Seattle ACO. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule.

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(i)(2) Alternative methods of compliance, approved previously in accordance with AD 84–21–05, amendment 39–4920, are not considered to be approved as alternative methods of compliance with this AD.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) The actions specified in paragraphs (b) and (c) shall be done in accordance with Boeing Document No. D6–48040–1, Volumes 1 and 2, ''Supplemental Structural Inspection Document'' (SSID), Revision H, dated June 1994, which contains the following list of effective pages:

Page No. shown on page	Revision level shown on page
List of Active Pages—Pages 1 thru 17.2	H

(**Note:** The issue date of Revision H is indicated only on the title page; no other page of the document is dated.) This incorporation by reference was approved by the Director of the FEDERAL REGISTER in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the FEDERAL REGISTER, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on June 23, 1998.

Issued in Renton, Washington, on May 12, 1998.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13077 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–264–AD; Amendment 39–10531; AD 98–11–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737–100 and –200 series airplanes, that currently requires that the FAA-approved maintenance inspection program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item, and repair of cracked structure. That AD was prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where, if damage were to occur, supplemental inspections may be required for timely detection. This amendment requires additional and expanded inspections, and repair of cracked structure. This amendment also expands the applicability of the existing AD to include additional airplanes. The actions specified by this AD are intended to ensure the continued structural integrity of the entire Boeing Model 737–100 and –200 fleet.

DATES: Effective June 23, 1998.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as June 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Washington; telephone (425) 227–2028; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 91–14–20, amendment 39–7061 (56 FR 30680, July 5, 1991), which is applicable to all Boeing Model 737–100 and –200 series airplanes, was published in the **Federal Register** on August 7, 1997 (62 FR 42433). That action proposed to supersede AD 91–14–20 to continue to require that the FAA-approved maintenance program be revised to include inspections that will give no less than the required damage tolerance rating for each Structural Significant Item (SSI). That action also proposed to require additional and expanded inspections, and repair of cracked structure. In addition, that action proposed to expand the applicability of the existing AD to include additional airplanes. [A similar proposal applicable to all Boeing Model 727 series airplanes also was published in the **Federal Register** on May 29, 1997 (62 FR 29081).]

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The FAA has received comments in response to the two NPRM's discussed previously (i.e., Docket Nos. 96–NM–263–AD and 96–NM–264–AD). Because in most cases the issues raised by the commenters are generally relevant to both NPRM's, each final rule includes a discussion of all comments received.

Two commenters support the proposed rule.

Delete Repairs and Type Certificate Holder Modifications

Several commenters request that, for the reasons stated below, the FAA delete the requirements that address repairs and Boeing modifications (i.e., modifications specified in service bulletins or other technical data issued by Boeing), as specified in paragraphs (d) and (f) of the proposed AD.

Several commenters contend that the intent of the Boeing Supplemental Structural Inspection Program (SSIP) was to evaluate the original structure of candidate fleet airplanes using the latest damage tolerance methods, not to bring all airplanes up to damage tolerance design. They note that the Boeing Supplemental Structural Inspection Document (SSID) explicitly excluded SSI's that had been modified or repaired, because they were no longer considered to be representative of the configuration of the fleet. One of these commenters also states that Boeing should retain the authority to determine whether repaired SSI's are representative.

The FAA infers that the commenters believe that the purpose of the SSIP for Boeing airplanes is limited to protecting the original airplane structure. As discussed in the notice of proposed rulemaking (NPRM), FAA Advisory Circular (AC) No. 91–56, Change 2, dated April 15, 1983, states that assessments should be accomplished on modified or repaired structure to determine whether special inspections are needed to ensure continued airworthiness, regardless of whether the structure continues to be ''representative'' of the original structure. Consistent with this policy, the FAA has previously issued other SSIP AD's that effectively require assessment of repairs and modifications:

- For McDonnell Douglas Model DC–8 series airplanes: AD 93–01–15, amendment 39–8464 (58 FR 5576, January 22, 1993);
- For McDonnell Douglas Model DC–9 series airplanes: AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996); and
- For McDonnell Douglas Model DC–10 series airplanes: AD 95–23–09, amendment 39–9429 (60 FR 61649, December 1, 1995).

One of the purposes of this AD is to correct this deficiency in the Boeing SSIP. The commenters have not provided any information to call this basic policy into question. The FAA finds that repaired or modified SSI's should be included in the Boeing SSIP

to ensure timely detection of cracking in those areas. Boeing does retain the authority to determine whether repaired or modified SSI's are ''representative,'' but that determination will no longer have the effect of deleting repaired or modified SSI's from the Boeing SSIP.

Several commenters also state that, in consideration of their request to delete repaired SSI's or Boeing modifications from the SSIP, reducing the inspection thresholds specified in the proposed AD would offset the FAA's concern regarding the reduction in the number of inspected SSI's. One of these commenters suggests that the FAA reduce the inspection thresholds specified in the proposed AD by an incremental amount to increase the inspected fleet by 10 percent. Such a reduction would compensate for the subject deletions. Another commenter states that lowering the threshold would require less time and lower labor costs than that required to develop special inspections for repairs and modifications. The FAA does not concur. As discussed previously, the purpose of the SSIP is to ensure the continued airworthiness of all airplanes, including those that have been repaired or modified. The commenters' proposal would not achieve this objective.

In contrast to the previous comments, several commenters state that SSI's affected by standard repairs or Boeing modifications do not need to be included in the Boeing SSIP, because the original structure is ''representative'' of the durability of repaired or modified structure. The FAA does not concur. Although repaired or modified structure may be similar to original structure, operators must accomplish an assessment to determine if the inspection program specified in the SSID is effective. It should be noted that, if the assessment indicates that the applicable inspection specified in the SSID is effective, no change to the Boeing SSIP is required.

Several commenters state that paragraphs (d) and (f) of the proposed AD are unnecessary because other airworthiness programs and documents, such as the proposed repair assessment program (RAP) for pressurized fuselages, will require operators to assess repairs and modifications. [The FAA has issued Notice No. 97–16, Docket No. 29104 (63 FR 126, January 2, 1998) that would require operators of certain transport category airplanes, including the Model 737, to adopt RAP's into their maintenance or inspection programs.] Two of these commenters state that the 737 Structures Task Group (STG) (a group consisting of 737 operators and Boeing) has taken the position that only repairs to the fuselage skins and pressure webs need to be assessed for damage tolerance, not repairs to other areas of the airplane structure (e.g., wing and empennage SSI's).

For two reasons, the FAA does not concur that the proposed RAP is adequate to address potential fatigue cracking of modified or repaired SSI's. First, the proposed RAP does not address either the damage tolerance characteristics of SSI's in supplemental type certificate (STC) modified structure that has not been repaired, or the effects of such modifications on original SSI's.

Second, the FAA does not concur with the commenters that only the pressure boundary should be subject to a damage tolerance assessment. The STG's conclusion that only repairs to the pressure boundary need to be assessed is based on a small sampling of existing repairs and on an assumption that those repairs are representative of all repairs. This approach would not give any consideration to repairs that are internal to the fuselage skin, or repairs to the wings or empennage. The FAA is aware that a significant number of these types of repairs have been installed on Model 737 airplanes, and that these repairs have not been assessed, to the extent practicable, in accordance with the principles of the current damage tolerance standards (14 CFR 25.571, Amdt. 25–45). For those repairs that affect SSI's, the failure of which could be catastrophic, reliance on an assumption that these repairs are free of fatigue cracking is inappropriate.

Therefore, reliance on the proposed RAP is inconsistent with the policy of AC No. 91–56, which does not draw a distinction between original structure and modified or repaired structure in describing the need for damage tolerance assessments of SSI's to ensure the structural integrity of the airplane. As discussed in the NPRM, the FAA continues to consider that appropriate damage tolerance based inspections are a necessary means to ensure long-term structural integrity of all SSI's, including those that have been modified or repaired. It should be noted that this AD and the proposed RAP are complementary for the structure associated with fuselage skins and pressure webs. Compliance with the SSID may be facilitated by use of the repair assessment guidelines developed in conjunction with the proposed RAP; and, assuming that the FAA adopts the proposed RAP, compliance with this AD will facilitate compliance with the requirements of the proposed RAP.

One commenter states that the existing Corrosion Prevention and Control Program (CPCP), in concert with the proposed RAP, makes the inspections specified in the proposed AD unnecessary and redundant. In addition, this commenter states that the CPCP requires 100 percent (visual) inspections of all SSI's, including repaired or modified SSI's.

The FAA does not concur. The relationship of this AD to the proposed RAP is discussed previously. The CPCP AD's require visual inspections to detect corrosion of SSI's. In contrast, the SSIP AD's require various inspection methods (e.g., visual, eddy current, ultrasonic) to detect fatigue cracks in SSI's. Because the purposes of the two programs are different, in many cases, the corrosion inspections would not be adequate to detect fatigue cracking. In conclusion, the FAA has determined that the Boeing SSIP is necessary to maintain the airworthiness of the Boeing Model 737 fleet, and that it is not redundant with the proposed RAP and CPCP.

Extend Compliance Time for Assessing Existing Repairs and Boeing Modifications

Several commenters request that the FAA revise paragraph (d) of the proposed AD to extend the compliance time of 18 months for existing repairs and Boeing modifications. The commenters state that repairs and Boeing modifications are likely to have fatigue characteristics that are similar to the original structure and, therefore, are not of immediate concern. These commenters also state that compliance within 18 months would cause an undue burden on operators because of the size of the fleet, the number of repairs and modifications on each airplane that would need to be identified and evaluated, the difficulty of accessing the affected structure, and the total number of work hours necessary to comply with the requirement. The commenters state that, because the purpose of the inspections is to identify potential unsafe conditions, rather than address known unsafe conditions, the level of effort necessary to comply within 18 months is unjustified. One commenter states that there is a shortage of sufficiently trained personnel to develop necessary non-destructive test (NDT) procedures to conduct the required inspections within the proposed compliance time. Another commenter proposes that operators be able to address repairs during the required SSID inspections.

The FAA concurs that an extension of the compliance time is appropriate. The FAA agrees that Boeing repairs and modifications are likely to have fatigue

characteristics that are similar to the original structure and, therefore, are not of immediate concern. For other repairs, although their fatigue characteristics may be different, the FAA recognizes that the records and data necessary to identify and evaluate these repairs may not be readily available.

Therefore, the FAA has revised the final rule to include a new paragraph (e) to specifically address repairs and design changes other than STC's. Operators are required to identify each repair or design change to an SSI at the time of the first inspection of each SSI after the effective date of the AD in accordance with Revision D of the SSID. Within 12 months after such identification, operators are required to assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI. This change will enable operators to identify these repairs and modifications at the time of the required SSID inspection, so that no additional inspections will be necessary. This change also will allow for the timely development of NDT procedures. The requirement to revise the maintenance or inspection program within 12 months after identification of each repair or design change is consistent with both the guidance of AC No. 25–1529–1, dated August 1, 1991, and the long-standing practice under the McDonnell Douglas SSIP's.

Evaluation of Existing STC Design Changes

Several commenters state that paragraph (d) of the proposed AD should retain the requirement to revise the maintenance or inspection program to address STC design changes within 18 months after the effective date of this AD. The commenters state that the durability of individual airplanes is affected by STC design changes, which affect existing SSI's and create new SSI's. Thus, the inspection times for these SSI's might need to be revised to account for changes in durability. The commenters also state that the STC documentation should be readily available. This would permit a timely paperwork evaluation of the effect on the Boeing SSIP without an extensive airplane inspection. In contrast, another commenter requests an extension of the 18-month compliance time to 5 years for implementing program revisions for addressing STC's. This commenter notes that STC holders are not equipped to perform the assessments of affected SSI's.

The FAA concurs partially. Although most of these commenters support the proposed requirements of paragraph (d) for STC design changes, the FAA has revised paragraph (d) of the final rule to limit its applicability to airplanes on which STC's have been incorporated, and to provide an option that would extend the compliance time for identifying and evaluating SSI's created or affected by STC's and revising the maintenance or inspection programs to reflect those evaluations. The FAA has recently reviewed several STC's regarding the installation of cargo doors on 727 airplanes and determined that the substantiating data for many of these STC's do not include internal loads data. Without the internal loads data for the modified structure, it would be difficult to perform an adequate damage tolerance assessment.

In accordance with the guidance provided in AC No. 91–56, external (flight, pressure, and ground) loads are necessary to complete a structural damage tolerance assessment and must be obtained from the type certificate (TC) holder or be developed by another source. Those external loads must then be applied to the structure and resolved into an internal distribution within the STC structural components (this includes original structure that is not modified but could be affected by the STC design change). All STC structural parts, whose failure could reduce the structural integrity of the airplane, then must be identified (as SSI's), and a damage tolerance assessment must be performed. Subsequently, the inspection methods compliance times (i.e., thresholds and repetitive intervals) must be developed for these SSI's and added to the operator's maintenance or inspection program. Therefore, the FAA has determined that operators may need more time to assess STC design changes on their airplanes.

To avail themselves of the option of extending the 18-month compliance time, operators are required to accomplish the following three actions:

1. Within 18 months after the effective date of this AD, submit a plan to ensure that they are developing data, as described above, that supports their revision to the FAA-approved maintenance or inspection program (i.e., compliance times and inspection methods for new or affected SSI's), and to demonstrate that they are able to complete the required tasks within 48 months after the effective date of this AD.

2. Within 18 months after the effective date of this AD, and thereafter at intervals not to exceed 18 months, accomplish a detailed visual inspection of all structure identified in Revision D of the SSID that has been modified in accordance with an STC (this repetitive inspection will be terminated by accomplishment of the third action). The detailed visual inspection and the repair of any crack shall be accomplished in accordance with a method approved by the Manager of the Seattle Aircraft Certification Office (ACO).

3. Within 48 months after the effective date of this AD, revise the maintenance or inspection program to include an inspection method for each new or affected SSI and to include the compliance times for initial and repetitive accomplishment of these inspections.

The plan that an operator submits to the FAA for approval should include a detailed description of the: (1) STC; (2) methodology for identifying new or affected SSI's; (3) method for developing loads and validating the analysis; (4) methodology for evaluating and analyzing the damage tolerance characteristics of each new or affected SSI (see discussion below); and (5) proposed inspection methods. The plan would not need to include all of these elements if the operator can otherwise demonstrate that its plan will result in implementation of an acceptable program within 48 months after the effective date of this AD. For this option, the final rule requires that the plan be submitted to the Manager of the Seattle ACO within 18 months after the effective date of the AD.

As indicated by the commenters, STC modifications may pose a greater risk of fatigue cracking than standard repairs or Boeing modifications. However, STC holders normally do not have access to Boeing type certification data. Therefore, STC modified structure may not have the same durability as the original structure or structure that has been subject to standard repairs or Boeing modifications. In order to ensure the structural integrity of STC modified structure during the 48-month compliance time provided for the development of a revision of the maintenance or inspection program to address STC's, the FAA considers it necessary to require repetitive detailed visual inspections of that structure.

These visual inspection methods are required to be approved by the Manager of the Seattle ACO to ensure that adequate access is provided and that the inspection area is adequately defined. In addition, the repair of any crack must be

approved by the Manager of the Seattle ACO. This contrasts with the repair provision of paragraph (f) of the final rule, which requires that cracks be repaired in accordance with any FAA-approved method. Seattle ACO approval for these repairs is necessary because, as discussed previously, the durability of these STC's is unknown, and findings of cracks may indicate the need for additional corrective action. The FAA has revised paragraph (f) of the final rule to reference the ACO approval as an exception to the general provisions allowing repairs in accordance with an FAA-approved method. The FAA selected an 18-month inspection interval to coincide with most operators' normal maintenance schedules. It should be noted that these visual inspections would not be required for operators who adopt a damage tolerance based revision to the maintenance or inspection program to address STC modifications within 18 months after the effective date of this AD, as proposed in the NPRM.

One commenter also requests that the FAA develop guidelines to assist operators in assessing STC's. The FAA does not consider that there is a need for further guidance at this time. As discussed previously, AC No. 91–56 provides extensive guidance on methods for assessing the airplane structure using damage tolerance principles to the extent practicable. This guidance is also applicable to STC's.

Revise Compliance Time to Assess Future Repairs and Modifications

Several commenters concur with the requirements of paragraph (f) of the proposed AD.

Several other commenters request that paragraph (f) be revised to extend the compliance time for assessment of repairs and modifications installed after the effective date of this AD. Rather than completing a damage tolerance assessment within 12 months after installation of the repair or modification, as proposed in the NPRM, these commenters suggest that operators should be required to complete an assessment within 12 months after accomplishment of the next SSID inspection of the SSI following such an installation.

The FAA does not concur. The FAA has determined that delaying the assessment until after the next SSID inspection is not appropriate. At the time of the installation, operators have all the data necessary to define the repair or modification that would be used in an assessment. Delaying the assessment until after the subsequent SSID inspection may result in loss of these data. Requiring an assessment within 12 months after installation of the repair or modification provides sufficient time and ensures that the inspection program accurately reflects the actual airplane structure. As stated previously, the requirement to revise the maintenance or inspection program within 12 months after installation is consistent with both the guidance of AC No. 25–1529 and the long-standing practice under the McDonnell Douglas SSIP's.

Clarify What ''Affected'' Means

One commenter requests clarification of the meaning of the word ''affected'' in paragraphs (d) and (f) of the proposed AD. The commenter states that the definition provided in the proposed AD is vague. As an example, the commenter states that it was not clear whether an operator needs to obtain a new inspection method and threshold or interval for a corrosion blend-out repair that does not include a doubler to reinforce the structure.

The FAA concurs that clarification is necessary. As defined in paragraphs (d) and (f) of the proposed AD, the term ''affected'' means that an SSI has been changed such that the original structure has been physically modified or that the loads acting on the SSI have been increased or redistributed.

For existing altered or repaired SSI's, the FAA has determined that it is evident when an SSI is ''affected'' because of a physical change to the structure. For existing changes where the loads acting on the SSI have been increased or redistributed, the FAA has determined that it may not be readily evident that an SSI is ''affected'' because there has not been a physical change to the structure. Because of this, it may not be possible for operators to identify all ''affected'' SSI's without performing a damage tolerance assessment. For these reasons, the FAA has changed paragraph (d) to require identification of structure that has been ''physically altered,'' rather than ''affected,'' in accordance with an STC; and has added a new paragraph (e) to require identification of other structure that has been ''physically altered or repaired.''

In the cited example of a corrosion blend-out to an SSI not requiring reinforcement, the operator would be required to assess whether the repair reduced the effectiveness of the original SSID inspection method and repetitive interval. However, a blend-out would not normally reduce the effectiveness of the original inspection method, because the structure is essentially unchanged. The repetitive interval would continue to be appropriate because the blend-out would not appreciably affect the durability of the structure.

After the effective date of this AD, when SSI's are altered or repaired or when the loads acting on an SSI are increased or redistributed, it should be evident to the operator that SSI's are ''affected.'' The FAA has determined that, at the time of the installation, operators should have all the data necessary to define the repair or modification that would be used in an assessment. For this reason, the FAA has determined that the word ''affected'' in paragraph (g) [proposed paragraph (f)] is appropriate.

If an SSI is determined to be ''affected,'' an operator must perform an assessment of the damage tolerance characteristics of the SSI to determine the effectiveness of the applicable SSID inspection for that SSI. It is only if that inspection is determined not to be effective that the operator must revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for that SSI. Accordingly, the FAA has revised paragraph (d)(1) of the final rule [which corresponds to paragraph (d) of the proposed AD as it applied to STC modified structure] to require the operator to assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI. If it is not effective, the operator is required to revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI. The FAA will monitor operators' compliance with these provisions to determine whether future revisions to this AD are necessary to fulfill the intent of AC No. 91–56.

Threshold for STC Modified Airplanes

One commenter questions whether airplanes that have been converted from a passenger configuration to an all-cargo configuration by the STC process are subject to the requirements of paragraph (c)(1) or (c)(2) of the proposed AD. (This comment specifically addresses Model 727 airplanes identified in NPRM Docket No. 96–NM–263–AD; however, the comment also applies to this AD.) The commenter's concern appears to result from the fact that, when some passenger airplanes were converted to cargo airplanes, the modifier revised the airplane records to reflect a different model number (e.g., a –200 may be reidentified as –200C). The FAA's intent is that the references to model numbers in the AD correspond to the model numbers specified on the type

certificate data sheet (TCDS). Because these converted airplanes are not identified as Model 737–200C series airplanes on the TCDS, paragraph (c)(1) does not apply, and paragraph (c)(2) does. As discussed previously, for SSI's altered by the conversion, operators also must consider the provisions of paragraph (d) of this AD, which require a damage tolerance evaluation to determine what structure needs to be inspected, what inspection methods are needed, and when the inspections are to occur. The FAA has revised the final rule to include a new NOTE following paragraph (c)(1) that clarifies this point.

Candidate Fleet Approach

One commenter suggests that the FAA delete the threshold approach defined in paragraph (c) of the proposed AD and retain the candidate fleet approach defined in AD 84–24–05 and the SSID. The commenter proposes that the candidate fleet be updated annually to reflect changes in the fleet (e.g., when an airplane is modified from a passenger configuration to a cargo configuration). (This comment specifically addresses Model 727 airplanes identified in NPRM Docket No. 96–NM–263–AD; however, the comment also applies to this AD.)

The FAA does not concur. As stated in the NPRM, the policy established in AC No. 91–56 anticipated that all SSIP's would establish thresholds. The candidate fleet approach was originally based on an understanding that the airplanes in the candidate fleet would continue to represent the entire fleet and would have the highest number of flight cycles in the fleet. This would be achieved by periodic updates to the candidate fleet. In practice, this approach has not fulfilled the intent of AC No. 91–56. Because of the extensive modifications and repairs of both candidate fleet airplanes and non-candidate fleet airplanes, the candidate fleet is no longer representative.

In addition, the FAA finds that the candidate fleet no longer includes all of the highest time airplanes in the fleet. Even if the SSID were updated annually to reflect changes to the fleet, this approach would be impractical for both operators and the FAA. Because of the frequency of modifications and changes in utilization of the affected airplanes, even annual updates would quickly be rendered obsolete. Annual changes in the composition of the candidate fleet would deprive operators of the predictability needed for long-term maintenance planning provided by the approach of defining the thresholds as adopted in this AD. For these reasons, the FAA has determined that the 737 SSIP must contain inspection thresholds for all Model 737 series airplanes to ensure the timely detection of fatigue cracks in the SSI's.

Extend Compliance Time for Revising the Maintenance or Inspection Program

Several commenters request that the compliance time of 12 months in paragraph (b) of the proposed AD be extended to provide operators more time to incorporate Revision D of the SSID into their FAA-approved maintenance or inspection program. These commenters state that an operator should not be required to revise its FAA-approved maintenance or inspection program to incorporate Revision D of the SSID until its airplanes are at or near the threshold specified in paragraph (c) of the proposed AD. The commenters state that, as paragraph (b) of the proposed AD is currently worded, all operators are required to incorporate the change regardless of the cycle age of an airplane. This requirement poses an undue burden (cost and time) to those operators that are not required to inspect until much later. Several other commenters also state that the safety of the fleet is not increased by requiring incorporation of Revision D of the SSID into an inspection program on low-cycle airplanes.

The FAA concurs with the commenters' requests to extend the compliance time of paragraph (b) to prior to reaching the threshold specified in paragraph (c) of the AD, or within 12 months after the effective date of this AD, whichever occurs later. The FAA has revised the final rule accordingly. However, as discussed previously in this AD, operators are required to comply with the requirements of paragraphs (d) and (g) of this AD, which may necessitate action before reaching the threshold.

Extend Grace Period for Initial Inspections

Several commenters request that the 18-month grace period specified in paragraph (c) of the proposed AD be extended to provide operators that are near or over the threshold more time to accomplish the initial inspection. Many inspections included in the SSID require several work hours to accomplish. These commenters point out that the proposed AD allows 12 months to implement Revision D of the SSID, but allows only 6 months thereafter to accomplish inspections (18 months total from the effective date). The commenters contend that accomplishment of all the inspections within the 18-month grace period will significantly affect an operator's planned maintenance schedule and program, especially operators of large fleets.

Several of these same commenters state that the original SSID AD 91–14–20 permitted the initial compliance time to be the repeat interval (after incorporation of the revision into a maintenance or inspection program). Several commenters also state that other AD's that mandate maintenance type programs, such as the CPCP for aging airplanes, give operators one repeat interval to come into compliance; therefore, the initial inspection should be similar in concept to such maintenance type programs (i.e., the grace period should be 18, 36, 48, 60, and 72-month intervals depending on the inspection).

One commenter states that no service, test, or engineering analysis could justify the inspection of new SSI's within 18 months. Another commenter states that the approach used in the proposed AD appeared to be the same as for a service bulletin with a known fatigue problem. This commenter also states that this approach was not appropriate for damage tolerance based inspections contained in the Boeing SSID, which are exploratory inspections and are not intended to address identified problems. Another commenter states that the SSID threshold is somewhat arbitrary, because it is based on a reliability analysis rather than a true fatigue analysis. The threshold is derived from calculations that ensure that a statistically accurate representation of the fleet is being inspected, rather than a true crack growth analysis. One of these commenters suggests that the grace period be based on flight cycles instead of calendar time because the SSID addresses structural fatigue. Several commenters state that a major maintenance check would be a more appropriate grace period for accomplishing the inspections specified in the SSID.

The FAA concurs that more time should be provided to accomplish the initial inspections specified in paragraph (c) of the proposed AD. However, the FAA does not concur that the grace period should be tied to the repeat interval established in the Boeing SSID because some of the repeat inspections have extremely long compliance times. The existing Boeing SSID is not like the CPCP document which establishes an initial compliance time (threshold) within the document. As discussed in Item 3. of the ''Action Since Issuance of Previous AD'' Section of the NPRM, the FAA has determined that a grace period based on a repeat

interval does not ensure that the SSI inspections are accomplished, and that fatigue cracks in SSI's are detected, in a timely manner.

The FAA finds that it would be appropriate to base the grace period on the number of accumulated flight cycles rather than calendar time, because the Boeing SSIP is based on fatigue and crack-growth analyses. In addition, the FAA concurs that the grace period should begin at the time when operators are required to have revised their maintenance or inspection programs to incorporate Revision D of the SSID. The FAA has determined that such a grace period would provide operators with more time to accomplish the inspection; yet it also would ensure that the SSI inspections are accomplished, and that fatigue cracks in SSI's are detected, in a timely manner. As a result, the FAA has revised the final rule to specify a grace period of 4,000 flight cycles measured from the date 12 months after the effective date of the AD. The 4,000-flight cycle grace period corresponds to a typical maintenance interval for most operators and, therefore, minimizes the need for special maintenance scheduling.

Modify Criteria for Adjusting the Threshold

Several commenters request that the criteria for adjusting the thresholds specified in paragraph (c) of the proposed AD (discussed in Item 3 of the ''Actions Since Issuance of Previous AD'' Section of the NPRM) should allow for the threshold to be reasonably adjusted. These commenters suggest that the FAA allow operators to use the rate of risk methodology to extend the threshold in the future.

The FAA concurs. The rate of risk methodology is a means of determining the probability that cracks will be detected in the inspected fleet before they initiate on other airplanes that have not been inspected. As discussed in the NPRM, in accordance with paragraph (i)(1) of the final rule, the FAA would approve threshold increases if it can be shown by sufficient data that the increase in the threshold does not result in an increased risk that damage will occur in the uninspected fleet before it is detected in the inspected fleet.

Some of these commenters state that the following statement in the NPRM is unreasonable: ''* * * the FAA may approve requests for adjustments to the compliance time * * * provided that no cracking is detected in the airplane structure.'' Confirmed fatigue cracks should not restrict the ability to adjust the SSIP threshold. The commenters state that the present philosophy for addressing an SSI with a confirmed fatigue crack is to remove that SSI from the SSID and to issue a service bulletin to correct the problem. The FAA then issues an AD to mandate the action, if the FAA deems it necessary. Once this SSI has been removed from the SSID, it should not affect the ability to adjust the SSIP threshold. The FAA concurs. In evaluating requests for extension of thresholds, the FAA would consider whether identified cracking has been addressed in accordance with the philosophy described by the commenters.

One commenter expresses concern that eventually all Model 737 airplanes would be subject to the Boeing SSIP. This commenter suggests that the threshold be defined in the SSID and managed by the STG. The FAA does not concur. As discussed previously, if data are submitted substantiating extension of the threshold, the FAA will approve such extensions, which may have the effect of excepting relatively low-time airplanes. The FAA would be receptive to proposals of threshold extensions from any source that submits sufficient data, including the STG. Because the thresholds are specified in the AD itself, there is no need for the SSID to be revised to incorporate the threshold.

Compliance Time for Initial Inspection

One commenter requests that the compliance time for the initial inspection requirements of paragraphs (c), (d), and (f) of the proposed AD be clarified. The commenter asks if there is anything in the proposed AD that would establish a threshold for inspections other than the 46,000-flight cycle compliance time specified in paragraph (c)(1) of the proposed AD. The commenter states that it has Model 727–100C series airplanes that have accumulated less than 27,000 total flight cycles, but are more than 30 years old. (This comment specifically addresses Model 727 airplanes identified in NPRM Docket No. 96–NM–263–AD; however, the comment also applies to this AD.)

The FAA finds that no change to the final rule is necessary. The age of an airplane is irrelevant to the inspection threshold. Because the inspections are related to fatigue, only the number of flight cycles that have accumulated on an airplane are relevant to the inspection threshold. If an airplane has been modified, altered, or repaired, such as an STC cargo conversion, the results of an assessment in accordance with either paragraph (d) or (g) of the AD could indicate that the initial inspections are required prior to the thresholds specified in paragraph (c) of the AD.

Limit Applicability of the Transferability Requirement

One commenter concurs with paragraph (g) of the proposed AD, which addresses the inspection schedule for transferred airplanes, provided that it is limited to airplanes that have exceeded the threshold established by paragraph (c)(1) or (c)(2). Paragraph (h) of the final rule [proposed paragraph (g)] is limited as stated by the commenter, and paragraph (h) is adopted as proposed.

Clarification of FAA-Approved Method

One commenter requests that paragraph (e) of the proposed AD be clarified so that there is no confusion regarding the level of FAA approval required for repairs to SSI's. The commenter states that it interprets paragraph (e) to mean that any Designated Engineering Representative (DER) with delegated authority would still have the authority to approve repairs to SSI's based on a static strength analysis. The commenter also interprets that an operator would have 12 months after the repair to develop an alternative inspection plan, or to demonstrate that the existing inspection program provides an acceptable level of safety.

The commenter is correct that DER's still have the authority to approve repairs to SSI's based on a static strength analysis. Except as discussed under the heading ''Evaluation of Existing STC Design Changes,'' paragraph (f) of the final rule [proposed paragraph (e)] is unchanged from the corresponding paragraph of AD 91–14–20. The commenter also is correct that operators are allowed 12 months after installation of the repair to revise their FAA-approved maintenance or inspection program to include new inspections for the affected SSI's. The new inspection method and compliance times must be approved by the Manager of the Seattle ACO.

Delegate Approval Authority to DER's

Several commenters request that the FAA delegate approval authority to the DER's to approve new inspections and compliance times specified in paragraphs (d) and (f) of the proposed AD. These commenters state that this delegation would decrease the time required to obtain such approvals. These commenters question whether the FAA will be able to process a substantial number of requests that will be generated because of the proposed AD. This question arises from one commenter's past experience with the

CPCP in which the approval process took a long period of time.

In the broader context of delegation of AD required approvals, the FAA has recently issued guidance on this subject and will be implementing this guidance in the near future. Because this request may be accommodated through FAA management of designees, no revision to the final rule is needed.

Credit for Previous Inspections

Several commenters request that paragraph (c) of the proposed AD positively reflect that an operator is in compliance if inspections have been accomplished in accordance with Revision D of Boeing Document No. D6–37089 prior to the effective date of the AD. These commenters state that paragraph (c) of the proposed AD is not clear with regard to whether or not credit is to be given and when the next inspection would be required. These commenters point out that the phrase ''Compliance: Required as indicated, unless accomplished previously,'' as stated in the proposed AD, allows the necessary credit for previously accomplished inspections.

The FAA does not consider that a change to the final rule is necessary. Operators are given credit for work previously performed by means of the phrase in the AD that was referenced by the commenters. In the case of this AD, if the initial inspection has been accomplished prior to the effective date of this AD, this AD does not require that it be repeated. However, the AD does require that repetitive inspections be conducted thereafter at the intervals specified in the Boeing SSID, and that other follow-on actions be accomplished when indicated.

Further FAA/Industry Discussions

Several commenters request that the FAA have further discussions with Boeing, operators, and other regulatory agencies prior to issuing the final rule because the proposed AD reflects a major change in FAA policy and extends well beyond the original concept of the Boeing SSIP. The FAA does not concur. As discussed in the NPRM and the preceding discussion of comments, this AD is consistent with the FAA's long-standing policy, as expressed in AC No. 91–56. As demonstrated by the breadth and depth of comments received, the public has had an ample opportunity to comment on the merits of the proposal.

Cost Estimate

Several commenters request that the FAA revise the Cost Impact information of NPRM Docket No. 96–NM–263–AD (for Model 727 airplanes) and NPRM Docket No. 96–NM–264–AD (for Model 737 airplanes) to accurately reflect the costs associated with accomplishing the requirements of both proposed AD's.

One commenter states that all affected 737 airplanes worldwide should be included in the cost estimate in NPRM Docket No. 96–NM–264–AD. The FAA does not concur. Airworthiness directives that are issued by the FAA directly affect only U.S.-registered airplanes; therefore, the cost estimate in an AD is limited only to U.S.-registered airplanes.

Several commenters to NPRM Docket No. 96–NM–263–AD (applicable to Model 727 series airplanes) state that 1,030 Model 727 airplanes (U.S.-registered) are affected by the proposed AD, not just 74 airplanes, as specified in NPRM. One of these commenters states that the cost estimate in the NPRM does not reflect the cost for all 727 operators to incorporate Revision H of the SSID into an FAA-approved maintenance or inspection program. Similarly, several commenters also state that the cost estimate in NPRM Docket No. 96–NM–264–AD does not reflect comparable costs for all 737–100 and –200 airplanes.

The FAA concurs with the commenters in that the NPRM proposed that every affected U.S. operator must revise their maintenance or inspection programs to incorporate Revision H (for Model 727 airplanes) or Revision D (for Model 737 airplanes) of the SSID within 12 months after the effective date of the applicable AD. As discussed previously under the heading ''Extend Compliance Time for Revising the Maintenance or Inspection Program,'' the FAA has revised both final rules so that the maintenance or inspection program revision is only required for any airplane prior to its reaching the applicable threshold.

In addition, the FAA has revised the Cost Impact information of Final Rule Docket No. 96–NM–263–AD to address a total of 1,001 airplanes, which includes 223 airplanes (35 operators) that are estimated to exceed the thresholds specified in the AD within the next 10 years. For this final rule, the FAA also has revised the Cost Impact information to address a total of 404 airplanes, which includes 158 airplanes (39 operators) that are estimated to exceed the thresholds specified in the AD within the next 10 years. As discussed previously under the heading ''Modify Criteria for Adjusting the Threshold,'' if sufficient substantiating data are submitted to justify extending the threshold, the FAA will grant such extensions so that the operators of some relatively low utilization airplanes may never be required to revise their maintenance or inspection program to incorporate the SSIP.

One commenter estimates that it will take 1,700 work hours per airplane (for Model 727 airplanes) to identify previously installed repairs, which will require at least 10 days of downtime to survey each airplane at a total cost to the commenter of $8.9 million. This commenter also estimates that its cost due to lost revenue would be $10.2 million, for a total cost of $19.1 million over 6 months (identification and lost revenue). This commenter further estimates that it will cost $110.5 million to survey existing repairs on all 727 airplanes.

Another commenter estimates that it will cost $240 million to accomplish the initial inspection to determine if there are existing repairs on the 727 airplanes. This task will take over 4,000 work hours per airplane to accomplish (2,000 work hours to open and close; 500 work hours to inspect, map, assess, etc.; and 1,500 work hours to complete non-routines generated by this special inspection).

Similar comments were submitted to NPRM Docket No. 96–NM–264–AD; however, the commenters did not provide specific cost figures for performing assessments on existing repairs.

As discussed under the heading ''Extend Compliance Time for Assessing Existing Repairs and Boeing Modifications,'' the FAA has revised both final rules to postpone the requirement to assess existing repairs of SSI's until after the applicable SSID inspection. This revision eliminates the need for any special inspection in order to comply with the requirement to assess repairs.

Several commenters also state that the cost estimate in the NPRM's did not reflect the costs of developing inspection programs for repairs and Boeing modifications that are installed prior to the effective date of the AD. The FAA concurs and has revised the Cost Impact information of both final rules to include (within the total costs) $258,000 per airplane over the next 10 years to account for these costs.

Several commenters assert that the cost of the proposed AD is over $100 million, which is more than 20 times the FAA's estimate in the NPRM Docket No. 96–NM–263–AD (for Model 727 airplanes). As discussed below in the Cost Impact information, the FAA estimates that the total cost over the next 10 years associated with this final rule is $98,044,800, or an average of $9,804,480 per year. The FAA also

estimates that the highest total cost during any one of the next 10 years associated with this final rule is $23,916,000. The difference between these estimates is at least in part attributable to the changes in the final rule discussed previously, which provide significant relief to operators. (Similar comments were submitted to NPRM Docket No. 96–NM–264–AD; however, the commenters did not provide a total cost estimate for these actions.)

Additional Clarifications

In reviewing the comments submitted to the NPRM, questions arose regarding the relationship of the inspection threshold requirements of paragraph (c) of the proposed AD and the provisions of the Boeing SSID that allow for sampling of specified percentages of the affected fleet. As explained in the NPRM, the FAA's intent in paragraph (c) is to require that all airplanes that exceed the threshold be inspected in accordance with the Boeing SSID. To the extent that there is any potential for conflict between paragraph (c) and the Boeing SSID, the provisions specified in this AD would prevail. Therefore, even if Revision D would permit operators to omit inspections of SSI's based on a sampling approach, this AD requires that those inspections be performed on all airplanes exceeding the specified thresholds. The FAA has revised the final rule to include a new NOTE following paragraph (c) to clarify this point.

Similarly, the FAA notes that paragraph (b) of the proposed AD would have required that the revision to the maintenance or inspection program include certain SSID provisions that were proposed to be overridden by other paragraphs of the proposed AD. The FAA has revised the requirements of paragraph (b) to clarify that the AD overrides these SSID provisions.

The FAA has added a parenthetical clarification in the applicability of the final rule to point out that Model 737–200C series airplanes also are subject to the requirements of the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,007 Boeing Model 737–100 and –200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 404 airplanes of U.S. registry and 43 U.S. operators (over 10 years) will be affected by this AD.

Incorporation of the SSID program into an operator's maintenance or inspection program, as required by AD 91–14–20, takes approximately 1,000 work hours per airplane (6 affected airplanes) to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost of incorporating the revised procedures (specified in Revisions B and C of the SSID) into the maintenance or inspection program is estimated to be $360,000, or $60,000 per airplane.

The recurring inspections, as required by AD 91–14–20, take approximately 500 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the recurring inspection cost to the 6 U.S.-registered candidate fleet airplanes is estimated to be $180,000, or $30,000 per airplane, per inspection cycle.

The incorporation of Revision D of the SSID into an operator's maintenance or inspection program, as required by this new AD, takes approximately 1,200 work hours (per operator) to accomplish, at an average labor rate of $60 per work hour. The FAA estimates that within 10 years, 39 operators will be required to incorporate Revision D of the SSID. Based on these figures, the cost of incorporating the revised procedures (specified in Revision D of the SSID) into the maintenance or inspection program is estimated to be $2,808,000, or $72,000 per operator.

The recurring inspections, as required by this new AD, take approximately 600 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The FAA estimates that after 10 years, 39 operators will be required to inspect 146 airplanes and assess the damage tolerance characteristics of each repaired SSI or each SSI that is physically altered by an existing design change other than an STC. The cost impact of this inspection and assessment required by this AD on U.S. operators is estimated to be $71,328,000 over 10 years, or an average of $48,855 per airplane, per year. During the 10 years, the FAA also conservatively estimates that 43 operators of 404 airplanes will be required to assess the damage tolerance characteristics of each SSI on which the structure identified in Revision D of the SSID has been physically altered in accordance with an STC prior to the effective date of this AD. The cost impact of this assessment required by this AD on U.S. operators is estimated to be $21,000,000 over 10 years, or an average of $5,198 per airplane, per year.

In summary, the FAA estimates that the actions, as required by this new AD, will cost $98,044,800 over 10 years, or an average of $9,804,480 per year. The FAA also estimates that the average cost per airplane over 10 years is $242,685, or an average of $24,269 per year. The highest total cost during any one of the 10 years is $23,916,000. (The FAA has included in the Rules Docket a detailed description of cost estimates related to the actions required by this AD.)

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, it can reasonably be assumed that the majority of the affected operators have already initiated the original SSID program (as required by AD 91–14–20), and many may have already initiated the additional inspections required by this new AD action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–7061 (56 FR 30680, July 5, 1991), and by adding a new airworthiness directive (AD), amendment 39–10531, to read as follows:

98–11–04 Boeing: Amendment 39–10531. Docket 96–NM–264–AD. Supersedes AD 91–14–20, Amendment 39–7061.

Applicability: All Model 737–100 and –200 series airplanes (including Model 737–200C series airplanes), certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continued structural integrity of the total Boeing Model 727 fleet, accomplish the following:

Note 1: Where there are differences between the AD and the Supplemental Structural Inspection Document, the AD prevails.

(a) For airplanes listed in Section 3.0 of Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision B, dated February 18, 1987, and Revision C, dated January 1990: Within 12 months after August 9, 1991 (the effective date of AD 91–14–20, amendment 39–7061), incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in that document. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include and shall be implemented in accordance with the procedures in Sections 5.0 and 6.0 of the SSID. This revision shall be deleted following accomplishment of the requirements of paragraph (b) of this AD.

Note 2: For the purposes of this AD, an SSI is defined as a principal structural element that could fail and consequently reduce the structural integrity of the airplane.

(b) Prior to reaching the threshold specified in paragraph (c) of this AD, or within 12 months after the effective date of this AD, whichever occurs later, incorporate a revision into the FAA-approved maintenance or inspection program that provides no less than the required DTR for each SSI listed in Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision D, dated June 1995 (hereinafter referred to as ''Revision D''). (The required DTR value for each SSI is listed in the document.) Except as provided to the contrary in paragraphs (c), (d), and (g) of this AD, the revision to the maintenance or inspection program shall include and shall be implemented in accordance with the procedures in Section 5.0, ''Damage Tolerance Rating (DTR) System Application'' and Section 6.0, ''SSI Discrepancy Reporting'' of Revision D. Upon incorporation of the revision required by this paragraph, the revision required by paragraph (a) of this AD may be deleted.

(c) Except as provided in paragraph (d), (e), or (g) of this AD, perform an inspection to detect cracks in all structure identified in Revision D at the time specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For Model 737–200C series airplanes: Inspect prior to the accumulation of 46,000 total flight cycles, or within 4,000 flight cycles measured from the date 12 months after the effective date of this AD, whichever occurs later.

Note 3: The requirements specified in paragraph (c)(1) of this AD only apply to airplanes listed as 737–200C on the type certificate data sheet. Paragraph (c)(1) does not apply to airplanes that have been modified from a passenger configuration to an all-cargo configuration by supplemental type certificate (STC). Paragraphs (c)(2) and (d) apply to those airplanes.

(2) For all airplanes, except for those airplanes identified in paragraph (c)(1) of this AD: Inspect prior to the accumulation of 66,000 total flight cycles, or within 4,000 flight cycles measured from the date 12 months after the effective date of this AD, whichever occurs later.

Note 4: Notwithstanding the provisions of paragraphs 5.1.1, 5.1.2, 5.1.6(e), .1.11, 5.1.12, 5.1.13, 5.2, 5.2.1, 5.2.2, 5.2.3, and 5.2.4 of the General Instructions of Revision D, which would permit operators to perform fleet and rotational sampling inspections, to perform inspections on less than whole airplane fleet sizes and to perform inspections on substitute airplanes, this AD requires that all airplanes that exceed the threshold be inspected in accordance with Revision D.

Note 5: Once the initial inspection has been performed, operators are required to perform repetitive inspections at the intervals specified in Revision D in order to remain in compliance with their maintenance or inspection programs, as revised in accordance with paragraph (b) of this AD.

(d) For airplanes on which the structure identified in Revision D has been physically altered in accordance with an STC prior to the effective date of this AD: Accomplish the requirements specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Within 18 months after the effective date of this AD, assess the damage tolerance characteristics of each SSI created or affected by each STC to determine the effectiveness of the applicable Revision D inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. Following accomplishment of the revision and within the compliance times established, perform an inspection to detect cracks in the structure affected by any design change or repair, in accordance with the new inspection method. The new inspection method and the compliance times shall be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 6: For purposes of this AD, an SSI is ''affected'' if it has been physically altered or repaired, or if the loads acting on the SSI have been increased or redistributed. The effectiveness of the applicable inspection method and compliance time should be determined based on a damage tolerance assessment methodology, such as that described in FAA Advisory Circular AC No. 91–56, Change 2, dated April 15, 1983.

(2) Accomplish paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this AD.

(i) Within 18 months after the effective date of this AD, submit a plan that describes a methodology for accomplishing the requirements of paragraph (d)(1) of this AD to the Manager, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181.

Note 7: The plan should include a detailed description of the: STC; methodology for identifying new or affected SSI's; method for developing loads and validating the analysis; methodology for evaluating and analyzing the damage tolerance characteristics of each new or affected SSI; and proposed inspection method. The plan would not need to include all of these elements if the operator can otherwise demonstrate that its plan will enable the operator to comply with paragraph (d)(2)(iii) of this AD.

(ii) Within 18 months after the effective date of this AD, perform a detailed visual inspection in accordance with a method approved by the Manager, Seattle ACO to detect cracks in all structure identified in Revision D that has been altered by an STC.

(A) If no crack is detected, repeat the detailed visual inspection thereafter at intervals not to exceed 18 months.

(B) If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, Seattle ACO.

(iii) Within 48 months after the effective date of this AD, revise the FAA-approved maintenance or inspection program to include an inspection method for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. The inspection methods and the compliance times shall be approved by the Manager, Seattle ACO. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive

inspection requirements of paragraph (d)(2)(ii)(A) of this AD.

Note 8: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision D, which would permit deletions of modified, altered, or repaired structure from the SSIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

(e) For airplanes on which the structure identified in Revision D has been repaired or physically altered by any design change other than an STC identified in paragraph (d), prior to the effective date of this AD: At the time of the first inspection of each SSI after the effective date of this AD in accordance with Revision D, identify each repair or design change to that SSI. Within 12 months after such identification, assess the damage tolerance characteristics of each SSI created or affected by each repair or design change to determine the effectiveness of the applicable SSID inspection for each SSI and, if not effective, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 9: For the purposes of this AD, a design change is defined as any modification, alteration, or change to operating limitations.

(f) Except as provided in paragraph (d)(2)(ii)(B) of this AD, cracked structure found during any inspection required by this AD shall be repaired, prior to further flight, in accordance with an FAA-approved method.

(g) For airplanes on which the structure identified in Revision D is affected by any design change (including STC's) or repair that is accomplished after the effective date of this AD: Within 12 months after that modification, alteration, or repair, revise the FAA-approved maintenance or inspection program to include an inspection method and compliance times for each new or affected SSI, and to include the compliance times for initial and repetitive accomplishment of each inspection. The new inspection method and the compliance times shall be approved by the Manager, Seattle ACO.

Note 10: Notwithstanding the provisions of paragraphs 5.1.17 and 5.1.18 of the General Instructions of Revision D, which would permit deletions of modified, altered, or repaired structure from the SIP, the inspection of SSI's that are modified, altered, or repaired shall be done in accordance with a method approved by the Manager, Seattle ACO.

(h) Before any airplane that is subject to this AD and that has exceeded the applicable compliance times specified in paragraph (c) of this AD can be added to an air carrier's operations specifications, a program for the accomplishment of the inspections required by this AD must be established in accordance with paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For airplanes that have been inspected in accordance with this AD, the inspection of each SSI must be accomplished by the new operator in accordance with the previous operator's schedule and inspection method, or the new operator's schedule and inspection method, whichever would result in the earlier accomplishment date for that SSI inspection. The compliance time for accomplishment of this inspection must be measured from the last inspection accomplished by the previous operator. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule and inspection method.

(2) For airplanes that have not been inspected in accordance with this AD, the inspection of each SSI required by this AD must be accomplished either prior to adding the airplane to the air carrier's operations specification, or in accordance with a schedule and an inspection method approved by the Manager, Seattle ACO. After each inspection has been performed once, each subsequent inspection must be performed in accordance with the new operator's schedule.

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 11: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(i)(2) Alternative methods of compliance, approved previously in accordance with AD 91–14–20, amendment 39–7061, are not considered to be approved as alternative methods of compliance with this AD.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) The actions specified in paragraphs (b) and (c) shall be done in accordance with Boeing Document No. D6–37089, ''Supplemental Structural Inspection Document'' (SSID), Revision D, dated June 1995, which contains the following list of effective pages:

Page number shown on page	Revision level shown on page
List of Effective Pages Pages 1 thru 10.	D.

Note: The issue date of Revision D is indicated only on the title page; no other page of the document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on June 23, 1998.

Issued in Renton, Washington, on May 12, 1998.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13078 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–17]

Amendment to Class D and Class E Airspace; Fort Leonard Wood, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class D and Class E airspace areas at Fort Leonard Wood, Forney Army Airfield, MO. The FAA has developed Global Positioning System (GPS) Runway (RWY) 14; GPS RWY 32; Localizer (LOC) RWY 14; Nondirectional Radio Beacon (NDB) RWY 14; NDB RWY 32; VHF Omnidirectional Range (VOR) RWY 14; and VOR RWY 32 Standard Instrument Approach Procedures (SIAPs) to serve Fort Leonard Wood, Forney Army Airfield, MO. The enlarged Class E surface area and Class E airspace area 700 feet Above Ground Level (AGL) will contain the new SIAPs within controlled airspace. A minor revision to the Airport Reference Point (ARP) coordinates is included in this document. The intended effect of this rule is to revise the ARP coordinates and to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: Effective date: 0901 UTC, October 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before July 1, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation

Administration, Docket Number 98–ACE–17, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class D and Class E airspace at Fort Leonard Wood, Forney Army Airfield, MO. The amendment to Class E surface area and Class E 700 feet AGL airspace area at Forney Army Airfield will provide additional controlled airspace in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under IFR from aircraft operation under VFR. The Class D area is amended to indicate the new ARP coordinates. The amendment at Forney Army Airfield will revise the ARP coordinates, provide additional controlled surface area, provide controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The areas will be depicted on appropriate aeronautical charts. Class D airspace areas designated for an airport containing at least one primary airport around which the airspace is designated are published in paragraph 5000; Class E airspace areas extending upward from the surface and designated as an extension to Class D or Class E surface area are published in paragraph 6004; and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objection. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–17''. The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

ACE MO D Fort Leonard Wood, MO [Revised]

Fort Leonard Wood, Forney Army Airfield, MO
(Lat. 37°44′30″N., long. 92°08′27″W.)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4-mile radius of the Forney Army Airfield. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas extending upward from the surface and designated as an extension to Class D or Class E surface area

* * * * *

ACE MO E4 Fort Leonard Wood, MO [Revised]

Fort Leonard Wood, Forney Army Airfield, MO
(Lat. 37°44′30″N., long. 92°08′27″W.)
Forney VOR
(Lat. 37°44′33″N., long. 92°08′20″W.)
Buckhorn NDB
(Lat. 37°41′51″N., long. 92°06′14″W.)

That airspace extending upward from the surface within 2.4 miles each side of the Forney VOR 318° radial extending from the 4-mile radius of Forney Army Airfield to 7 miles northwest of the VOR and within 4 miles southwest and 8 miles northeast of the 147° bearing from the Buckhorn NDB extending from the 4-mile radius of the airport to 16 miles southeast of the Buckhorn NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Fort Leonard Wood, MO [Revised]

Fort Leonard Wood, Forney Army Airfield, MO
(Lat. 37°44′30″N., long. 92°08′27″W.)
Forney VOR
(Lat. 37°44′33″N., long. 92°08′20″W.)
Buckhorn NDB
(Lat. 37°41′51″N., long. 92°06′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Forney Army Airfield; excluding that airspace within the R–4501 Fort Leonard Wood, MO, Restricted Areas during the specific times they are effective.

* * * * *

Issued in Kansas City, MO, on May 1, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–13272 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–9]

Amendment to Class E Airspace; Gordon, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment modifies the Class E airspace area at Gordon Municipal Airport, Gordon, NE. The FAA has developed a Global Positioning System (GSP) Runway (RWY) 22 Standard Instrument Approach Procedure (SIAP) and a Nondirectional Radio Beacon (NDB) RWY 22 SIAP to serve Gordon Municipal Airport, Gordon, NE. In addition, a review of the Class E airspace for Gordon Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D and amended to include the changes required for the GPS RWY 22 and NDB RWY 22 SIAPs. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 22 and NDB RWY 22 SIAPs and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, August 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Federal Aviation Administration (FAA), Manager, Airspace Branch, Air Traffic Division, (ACE–520), Attention: Rules Docket Number 98–ACE–9, 601 East 12th Street., Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 22 and NDB RWY 22 SIAPs to serve the Gordon Municipal Airport, Gordon, NE. A review of the Class E airspace for Gordon Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment to Class E airspace at Gordon, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document

withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–9.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as folllows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Gordon, NE. [Revised]

Gordon Municipal Airport, NE
(Lat. 42° 82′ 21″ N., long. 102° 10′ 31″ W.)
Gordon NDB
(Lat. 42° 48′ 04″ N., long. 102° 10′ 46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Gordon Municipal Airport and within 2.6 miles each side of the 045° bearing from the Gordon NDB extending from the 6.6-mile radius to 7.4 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on April 23, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–13270 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–10]

Amendment to Class E Airspace; Kimball, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Kimball Municipal Airport, Kimball, NE. A review of the Class E airspace for Kimball Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to comply with the criteria of FAA Order 7400.2D, and to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: 0901 UTC, August 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–10, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Kimball, NE. A review of the Class E airspace for Kimball Municipal Airport, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet

AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Kimball Municipal Airport will meet the criteria of FAA Order 7400.2D, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this section and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–10''. The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 10034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1063 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE NE E5 Kimball, NE [Revised]

Kimball Municipal Airport, NE
(Lat. 41°11′17″N., long. 103°40′11″W.)

Kimball NDB
(Lat. 41°11′29″N., long. 103°40′11″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Kimbal Municipal Airport and within 2.6 miles each side of the 120° bearing from the Kimball NDB extending from the 6.6-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on April 23, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–13269 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–31]

Amendment to Class E Airspace; Mason City, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Mason City, IA.

DATE: The direct final rule published at 63 FR 7060 is effective on 0901 UTC, June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

The FAA published this direct final rule with a request for comments in the **Federal Register** on February 12, 1998 (63 FR 7060). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 18, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on April 29, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–13268 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–20]

Remove Class E Airspace and Establish Class E Airspace; Springfield, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action removes Class E surface area and establishes a new Class E surface area at Springfield, MO. Class C airspace has been established and the Class D airspace has been removed at Springfield Municipal Airport, Springfield, MO. The name of the Springfield Municipal Airport has been changed to Springfield-Branson Regional Airport. The intended effect of this rule is to remove the Class E surface areas, establish a new Class E surface area, and change the name of Springfield Municipal Airport.

DATES: This direct final rule is effective on 0901 UTC, August 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 17, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–20, 601 East 12th Street, Kansas city, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA Has established Class C airspace and removed Class D airspace at Springfield Municipal Airport, Springfield, MO. The action to establish Class C and remove Class D requires amending the Class E surface areas. The Class E surface areas are removed and a new Class E surface area as an extension to Class C is established. The name of Springfield Municipal Airport has been changed to Springfield-Branson Regional Airport. The area will be depicted on appropriate aeronautical charts. Class E airspace designated as a surface area for an airport is published in paragraph 6002; Class E airspace areas extending upward from the surface designated as an extension to a Class C surface area are published in paragraph 6003; and Class E airspace areas extending upward from the surface designated as an extension to a Class D or Class E are published in paragraph 6004 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–20.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace designated as a surface area for an airport

* * * * *

ACE MO E2 Springfield, MO [Removed]

* * * * *

Paragraph 6003 Class E airspace areas extending upward from the surface designated as an extension to a Class C surface area

* * * * *

ACE MO E3 Springfield, MO [Removed]

Springfield-Branson Regional Airport, MO
(Lat. 37°14′39″N., long. 93°23′13″W.)
Springfield VORTAC
(Lat. 37°21′21″N., long. 93°20′03″W.)

That airspace extending upward from the surface within 1.8 miles west and 2.2 miles east of the Spingfield VORTAC 200° radial extending from the 5-mile radius of the Springfield-Branson Regional Airport to the VORTAC.

* * * * *

Paragraph 6004 Class E airspace areas extending upward from the surface designated as an extension to a Class D or Class E surface area

* * * * *

ACE MO E4 Springfield, MO [Removed]

* * * * *

Issued in Kansas City, MO, on May 4, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–13273 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–16]

Amendment to Class E Airspace; Ainsworth, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Ainsworth Municipal Airport, Ainsworth, NE. A review of the Class E airspace for Ainsworth Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area has been enlarged to conform to the criteria of FAA Order 7400.2D. A minor revision to the Airport Reference Point (ARP) coordinates is included in this document. The intended effect of this rule is to revise the ARP coordinates, comply with the criteria of FAA Order 7400.2D, and to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR).

DATES: Effective date: 0901 UTC, August 13, 1998.

Comments for inclusion in the Rules Docket must be received on or before June 15, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–16, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Ainsworth, NE. A review of the Class E airspace for Ainsworth Municipal Airport, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL, is based on a standard climb gradient of 200 feet per mile, plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The Class E airspace is amended to indicate the revised ARP coordinates. The amendment at Kimball Municipal Airport will meet the criteria of FAA Order 7400.2D, revise the ARP coordinates, provide additional controlled airspace at and above 700 feet AGL, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation

listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–ACE–16''. The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Ainsworth, NE [Revised]

Ainsworth Municipal Airport, NE
(Lat. 42°34′45″N., long. 99°59′35″W.)
Ainsworth VOR/DME
(Lat. 42°34′09″N., long. 99°59′23″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Ainsworth Municipal Airport and within 2.6 miles each side of the 198° radial of the Ainsworth VOR/DME extending from the 6.8-mile radius to 7 miles south of the airport and within 2.6 miles each side of the 348° radial of the Ainsworth VOR/DME extending from the 6.8-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on April 23, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–13271 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 980212038–8117–02; I.D. 020298A]

RIN 0648–AF41

Fisheries of the Northeastern United States; Amendment 10 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; notice of suspension of notification requirements for Maine mahogany quahog vessels.

SUMMARY: NMFS issues this final rule implementing Amendment 10 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP). Amendment 10 establishes management measures for

the fishery for small ocean quahogs (mahogany quahogs), which occurs off the coast of Maine, north of 43°50′ N. lat.

NMFS announces that, as authorized in Amendment 10, the notification (call-in) requirements for vessels fishing under a Maine mahogany quahog permit are suspended.

DATES: Effective on May 21, 1998.

ADDRESSES: Copies of Amendment 10 and its supporting documents, including the environmental assessment and the regulatory impact review, are available from Dr. Chris Moore, Acting Executive Director, Mid-Atlantic Fishery Management Council (Council), Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904–6790.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978–281–9104.

SUPPLEMENTARY INFORMATION:

Background

A notice of availability of Amendment 10 was published in the **Federal Register** on February 9, 1998 (63 FR 6510), with the comment period ending April 10, 1998. A proposed rule to implement Amendment 10 was published in the **Federal Register** on February 26, 1998 (63 FR 9771), with the comment period ending April 13, 1998. All comments received by the end of the comment period on the proposed amendment, whether specifically directed to Amendment 10 or to the proposed rule, were considered in making the decision to approve the amendment. Details concerning the justification and development of Amendment 10 were provided in the preamble to the proposed rule and are not repeated here.

Amendment 10: (1) Establishes a Maine mahogany quahog management zone north of 43°50′ N. lat. (zone); (2) establishes a Maine mahogany quahog permit; (3) establishes an initial annual quota of 100,000 Maine bushels (35,150 hectoliters (hL)); (4) requires the Council to establish a Maine Mahogany Quahog Advisory Panel to make management recommendations; (5) allows for the revision of the annual quota within a range of 17,000 to 100,000 Maine bushels (5,975 to 35,150 hL); (6) requires vessels harvesting ocean quahogs from the zone to fish only in areas that have been certified by the State of Maine to be within the requirements of the National Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference (ISSC) as acceptable limits for the toxin responsible for paralytic shellfish poisoning (PSP); (7) requires vessels fishing under a Maine mahogany quahog permit to land ocean quahogs in Maine; (8) requires vessels fishing in the zone under an individual transferable quota (ITQ) and landing their catch outside Maine to land at a facility participating in an overall food safety program operated by the official state agency having jurisdiction that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose; and (9) gives the Administrator, Northeast Region, NMFS (Regional Administrator) the authority to suspend the existing vessel notification requirements for vessels possessing a Maine mahogany quahog permit and fishing in the zone, if he determines it is not necessary for enforcement.

In addition to these management measures, all vessel owners prosecuting the Maine mahogany quahog fishery must continue to abide by the vessel owner and dealer reporting and recordkeeping requirements set forth in 50 CFR part 648.

Comments and Responses

Twenty-six comments were received during the comment periods on Amendment 10 and the proposed rule. This includes 21 commenters who submitted identical letters. Twenty-five commenters supported the amendment and one was opposed, though several requested modification of specific measures. Twenty-five commenters raised concerns regarding the replacement provisions.

Comment 1: The Commissioner of the Maine Department of Marine Resources (Commissioner) commented that the initial quota of 100,000 Maine bushels (35,150 hL) and its potential subsequent adjustment of between 17,000 and 100,000 Maine bushels (5,975 and 35,150 hL) is somewhat arbitrary because it is based solely upon historical landings. Quota calculations based upon sustainable yields, independent from the initial quota, are encouraged by the amendment but may be in excess of 100,000 or less than 17,000 Maine bushels. The Commissioner asks that the regulations be modified so that the quota can be adjusted beyond the amounts specified.

Response: As explained in Amendment 10, a reliable survey of abundance has not been conducted for the Maine stock of mahogany quahogs. Historical landings information based on NMFS and State of Maine records comprise the best scientific information available to set quotas, consistent with national standard 2 of the Magnuson-Stevens Act Fishery Conservation and Management Act (Magnuson-Stevens Act). Such historical data are not arbitrary. Amendment 10 notes that a stock assessment could result in the modification of the quota range and that such a modification would have to be made by a subsequent amendment to Amendment 10. NMFS has no authority to make such a change prior to that amendment process.

Comment 2: Industry participants and the Commissioner commented that the vessel replacement provisions in the proposed rule are in violation of national standards 5, 6, and 10 of the Magnuson-Stevens Act. The industry participants noted that they should have the right to upgrade their vessels to meet changing needs.

Response: NMFS notes that various restrictions on vessel replacement are in effect for nearly all the limited entry fisheries managed under authority of the Magnuson-Stevens Act. In regard to national standard 5, which requires that management measures consider economic efficiency where practicable, the commenters may be correct in assuming that certain vessel owners would increase the economic efficiency of their vessels by replacing them with larger ones, though in a small-scale fishery such as this there may be limits to the improvements. However, limits on increases in vessel length, tonnage, and horsepower are implemented to protect fish stocks by indirectly controlling fishing capacity.

National standard 6 requires that management measures take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Amendment 10 achieves this through establishing an annual quota-setting mechanism. The amendment sets a maximum initial quota consistent with historical landings. Quota increases can occur once accurate biomass estimates are produced. Quota decreases from the maximum 100,000 bushel initial quota can occur annually based on the advice of the Maine Ocean Quahog Advisory Panel through the Surf Clam and Ocean Quahog Committee. Variations among, and contingencies in, both the resource and catches could result in annual

changes to the frameworked maximum annual quota, or result in initiation of the amendment process.

National standard 10 requires that management measures promote the safety of human life at sea. The commenter's assertion that larger vessels are safer is not necessarily true. Safety is more of the seaworthiness function of a vessel than its size.

While the measure has been approved, NMFS remains concerned about the provision concerning future replacement of a vessel issued a Maine mahogany quahog permit. NMFS noted that the measure is inconsistent with similar measures in other fishery management plans in the region, including recent plans enacted by the Council for the black sea bass and summer flounder fisheries. NMFS believes this issue will be resolved by the amendment the Mid-Atlantic and New England Fishery Management Councils have begun to develop to standardize these requirements.

Comment 3: One industry participant suggested that the size of the Maine bushel should be equal to that of the standard clam bushel used in the Mid-Atlantic region.

Response: The Maine mahogany fishery has historically utilized a bushel measuring 1.2445 cubic feet in volume, smaller than the standard clam bushel, which measure 1.8800 cubic feet in volume. NMFS sees no need to make this change and believes it could create confusion in the industry and undermine the accuracy of monitoring and reporting efforts.

Comment 4: One commenter believes that harvest by State of Maine licensed vessels in State waters should not count against the 100,000 Maine bushel initial quota.

Response: NMFS notes that the initial quota of 100,000 Maine bushels is based upon historical landings from both State of Maine and Federal waters. Therefore, landings from both State and Federal waters must be counted against the quota. Several fishery management plans, such as those for Summer Flounder and Scup use an aggregate of state and Federal landings in establishing and monitoring annual quotas.

Comment 5: Twenty-three commenters, including the Commissioner, requested the suspension of the trip notification requirements in the final rule.

Response: As authorized by Amendment 10, the Regional Administrator has suspended the notification requirement for the Maine mahogany quahog fishery.

Suspension of Notification Requirements

The Regional Administrator, pursuant to 50 CFR 648.15(b)(4), may suspend the trip notification requirements found at 50 CFR 648.15 (b)(1) and (2) for vessels issued a Maine mahogany quahog permit fishing within the zone if it is not deemed necessary for enforcement. Based on advice from NMFS Law Enforcement, the Regional Administrator has suspended these notification requirements. If NMFS Law Enforcement advises in the future that such notification is necessary to enforce effectively the management measures in the Maine mahogany quahog zone, the Regional Administrator advises that the notification requirements will be re-established for the fishery as specified in the final rule. The vessel notification requirements remain in effect for vessels fishing under an ITQ allocation permit irrespective of area fished.

Classification

The Regional Administrator determined that Amendment 10 is necessary for the conservation and management of the Maine mahogany quahog fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0202. Public reporting burden for these collections-of-information is estimated to average 30 minutes for a new vessel permit, 30 minutes for an appeal, and 15 minutes for a renewal application for a permit. The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

When this rule was proposed, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Amendment 10 relieves several restrictions for participants in the Maine mahogany quahog fishery. These include the use of 32-bushel cages to offload quahogs and the placement of tags on cages to indicate that the harvest is counted toward the appropriate individual allocation. In particular, the requirement to use 32-bushel cages is infeasible for the smaller Maine mahogany quahog vessel and docks due to the cage size. In addition, mahogany quahog vessels harvest on a small scale, and it is inappropriately restrictive to use a 32-bushel container to measure landings.

The implementation of Amendment 10 regulations will relieve an economic restriction for approximately 68 vessels, which will no longer be subject to requirements under the FMP. Accordingly, under 5 U.S.C. 553(d)(1), it is not subject to a 30-day delay in effective date. However, since many vessel owners that comprise the fishery will require additional time to obtain the moratorium permit, NMFS makes this rule effective May 21, 1998.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 13, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENT UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in paragraph (b), the table is amended by adding, in

numerical order, the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part section where the information collection requirement is located	Current OMB control number (all numbers Begin with 0648–).
50 CFR	
648.76	–0202

50 CFR CHAPTER VI

PART 648—FISHERIES OF NORTHEASTERN UNITED STATES

3. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 648.2, definitions for ''Maine bushel'' and ''Maine mahogany quahog zone'' are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Maine bushel means a standard unit of volumetric measurement equal to 1.2445 cubic feet (35.24 L) of ocean quahogs in the shell.

Maine mahogany quahog zone means the area bounded on the east by the U.S.-Canada maritime boundary, on the south by a straight line at 43°50′ N. latitude, and on the north and west by the shoreline of Maine.

* * * * *

5. In § 648.4, paragraph (a)(4)(i) is added and (a)(4)(ii) is reserved to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(4) * * *

(i) *Maine mahogany quahog permit.* (A) A vessel is eligible for a Maine mahogany quahog permit to fish for ocean quahogs in the Maine mahogany quahog zone if it meets the following eligibility criteria:

(*1*) The vessel was issued a Federal Maine Mahogany Quahog Experimental Permit during one of the experimental fisheries authorized by the Regional Administrator between September 30, 1990, and September 30, 1997; and,

(*2*) The vessel landed at least one Maine bushel of ocean quahogs from the Maine mahogany quahog zone as documented by fishing or shellfish logs submitted to the Regional Administrator prior to January 1, 1998.

(B) *Application/renewal restriction.* No one may apply for a Maine mahogany quahog permit for a vessel after May 19, 1999.

(C) *Replacement vessels.* To be eligible for a Maine mahogany quahog permit, a replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery. Both the entering and replaced vessels must be owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(D) *Appeal of denial of a permit.* (*1*) Any applicant denied a Maine mahogany quahog permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator's designee erred in concluding that the vessel did not meet the criteria in paragraph (a)(4)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator's designee was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator.

(*3*) The hearing officer shall make a recommendation to the Regional Administrator.

(*4*) The Regional Administrator will make a final decision based on the criteria in paragraph (a)(4)(i)(A) of this section and on the available record, including any relevant documentation submitted by the applicant and, if a hearing is held, the recommendation of the hearing officer. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(ii) [Reserved]

* * * * *

6. In § 648.14, paragraphs (a)(23), (24), and (25) are revised, paragraphs (a)(105) through (109) and paragraph (a)(113) are added, and paragraph (x)(1)(ii) and the first sentence of paragraph (x)(1)(iii) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(23) Land unshucked surf clams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages.

(24) Land unshucked surf clams and ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone in containers other than cages from vessels capable of carrying cages unless, with respect to ocean quahogs, the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(25) Fail to comply with any of the notification requirements specified in § 648.15(b).

* * * * *

(105) Offload unshucked surf clams or ocean quahogs harvested in or from the EEZ outside the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(106) Offload unshucked surf clams harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages.

(107) Offload unshucked ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone from vessels not capable of carrying cages, other than directly into cages, unless the vessel has been issued a Maine mahogany quahog permit under this part and is not fishing for an individual allocation of quahogs under § 648.70.

(108) Purchase, receive for a commercial purpose other than transport to a testing facility, or process, or attempt to purchase, receive for commercial purpose other than transport to a testing facility, or process, outside Maine, ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

(109) Land or possess ocean quahogs harvested in or from the EEZ within the Maine mahogany quahog zone after the effective date published in the **Federal Register** notifying participants that Maine mahogany quahog quota is no longer available, unless the vessel is fishing for an individual allocation of ocean quahogs under § 648.70.

* * * * *

(113) Land ocean quahogs outside Maine that are harvested in or from the

EEZ within the Maine mahogany quahog zone, except at a facility participating in an overall food safety program, operated by the official state agency having jurisdiction, that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with procedures used by the State of Maine for such purpose.

* * * * *

(x) * * *

(1) * * *

(ii) Surf clams or ocean quahogs landed from a trip for which notification was provided under § 648.15(b) or § 648.70(b) are deemed to have been harvested in the EEZ and count against the individual's annual allocation unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70.

(iii) Surf clams or ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and are deemed to be part of an individual's allocation, unless the vessel has a valid Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) and is not fishing for an individual allocation under § 648.70; or, unless the preponderance of available evidence demonstrates that he/she has surrendered his/her surf clam and ocean quahog permit issued under § 648.4 and he/she conducted fishing operations exclusively within waters under the jurisdiction of any state. * * *

* * * * *

7. In § 648.15, paragraph (b)(4) is added to read as follows.

§ 648.15 Facilitation of enforcement.

* * * * *

(b) * * *

(4) *Suspension of notification requirements.* The Regional Administrator may suspend notification requirements for vessels fishing under a Maine mahogany quahog permit issued pursuant to § 648.4(a)(4)(i) if he determines that such notification is not necessary to enforce effectively the management measures in the Maine mahogany quahog zone. The Regional Administrator may rescind such suspension if he concludes that the original determination is no longer valid. A suspension or recision of suspension of the notification requirements by the Regional Administrator shall be published in the **Federal Register**.

* * * * *

8. In § 648.73, paragraph (d) is added to read as follows.

§ 648.73 Closed areas.

* * * * *

(d) *Areas closed due to the presence of paralytic shellfish poisoning toxin*—(1) *Maine mahogany quahog zone.* The Maine mahogany quahog zone is closed to fishing for ocean quahogs except in those areas of the zone that are tested by the State of Maine and deemed to be within the requirements of the National Shellfish Sanitation Program and adopted by the Interstate Shellfish Sanitation Conference as acceptable limits for the toxin responsible for paralytic shellfish poisoning. Harvesting is allowed in such areas during the periods specified by the Maine Department of Marine Resources during which quahogs are safe for human consumption. For information regarding these areas contact the State of Maine Division of Marine Resources at (207–624–6550).

(2) [Reserved]

9. In § 648.75, introductory text is added to read as follows:

§ 648.75 Cage identification.

Except as provided in § 648.76, the following cage identification requirements apply to all vessels issued a Federal fishing permit for surf clams and ocean quahogs:

* * * * *

10. Section 648.76 is added to subpart E to read as follows.

§ 648.76 Maine mahogany quahog zone.

(a) *Landing requirements.* (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.70 and 648.75. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally-permitted dealers for inspection by NMFS .

(b) *Quota monitoring and closures*—(1) *Catch quota.* (i) The annual quota for harvest of mahogany quahogs from within the Maine mahogany quahog zone is 100,000 Maine bushels (35,150 hL). The quota may be revised annually within the range of 17,000 and 100,000 Maine bushels (5,975 and 35,150 hL) following the procedures set forth in § 648.71.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.70 shall be applied against the Maine mahogany quahog quota, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.70 will be counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the quota based on dealer reports and other available information and shall determine the date when the quota will be harvested. NMFS shall publish notification in the **Federal Register** advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel.* The Council shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surf Clam and Ocean Quahog Committee of the Council, regarding revisions to the annual quota and other management measures.

[FR Doc. 98–13284 Filed 5–14–98; 4:41 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 980513127-8127-01; I.D.050598A]

RIN 0648–AL15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Data Collection

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule requires vessels in the shrimp fishery of the Gulf of Mexico to maintain and submit fishing records, to carry a NMFS-approved observer, and/or to carry a vessel monitoring system unit (VMS unit), if selected by NMFS to do so. This rule also informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections. The intended effect of this rule is to collect information on the operational effectiveness of bycatch reduction devices (BRDs) in shrimp trawls in reducing the mortality of juvenile red snapper, and, thereby, to determine management measures necessary to reduce overfishing of red snapper.

DATES: This rule is effective on May 14, 1998, through November 16, 1998. Comments must be received no later than June 18, 1998.

ADDRESSES: Comments on this interim rule must be sent to, and copies of documents supporting this rule may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, phone: 813–570–5305 or fax: 813–570–5583.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Shrimp trawls have a significant bycatch of non-target finfish and invertebrates, most of which are discarded dead. In particular, the shrimp fishery bycatch in the Gulf of Mexico includes a high mortality of juvenile (ages 0 and 1) red snapper, a valuable reef fish species for commercial and recreational fisheries. The red snapper stock of the Gulf of Mexico is overfished. Red snapper stock assessments prepared in 1995 and 1997 indicated that shrimp trawl bycatch of red snapper must be reduced to rebuild the red snapper resource to a spawning potential ratio (SPR) of 20 percent by the year 2019. The Council's Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico establishes the 20 percent SPR level as its goal for rebuilding the red snapper stock.

The Council developed FMP Amendment 9 to require the use of NMFS-certified BRDs in shrimp trawls towed in the Gulf of Mexico exclusive economic zone (EEZ), shoreward of the 100–fm (183–m) depth contour west of 85°30' W. long., the approximate longitude of Cape San Blas, Florida. To be certified, these BRDs must meet the FMP's bycatch reduction criterion requiring the reduction of shrimp trawl bycatch mortality of juvenile red snapper by a minimum of 44 percent from the average level of mortality of these age groups during 1984–89. Additional background on BRDs and the Council's rationale for requiring their use are contained in the preamble for the proposed and final rules implementing Amendment 9 (62 FR 35774, July 2, 1997; 63 FR 18139, April 14, 1998), and are not repeated here.

NMFS published an interim rule (63 FR 18144, April 14, 1998) to reserve part of the 1998 Gulf of Mexico red snapper total allowable catch (TAC) and to establish a procedure for releasing all or part of the reserved part of the TAC to commercial and recreational red snapper fisheries on September 1, 1998, based on the results of an immediate and major research effort to evaluate the effectiveness of BRDs in reducing juvenile red snapper bycatch mortality. This rule establishes regulations to govern this research program; the research effort will begin with the issuance of this rule.

Description of Research Program

The focus of the research program is to determine the operational effectiveness of NMFS-certified BRDs in the shrimp trawl fishery and to improve the data used for assessing the status of the red snapper stock. This information will be obtained by evaluating BRD performance, BRD exclusion mortality (mortality of juvenile red snapper excluded by the BRD), and industry compliance with the BRD requirements. The information will be used by NMFS to determine what portion of the reserved red snapper TAC may be released for harvest on September 1, 1998.

BRD performance will be measured by observers placed on as many as 100 shrimp vessels during the period May 14, 1998, through August 15, 1998. The observers will collect red snapper bycatch data (i.e., number of red snapper in the BRD-equipped net compared to the number in a control net) to determine the reduction in bycatch mortality on a tow-by-tow basis. Survival of red snapper after they leave the BRDs will also be examined. NMFS enforcement personnel will document the level of industry compliance with the BRD regulations during at-sea boardings and dock-side inspections.

The research program will also focus on improving estimates of shrimp fishing effort to be used in calculations of the shrimp fishery's total red snapper bycatch (i.e., improving scientific estimates of the total bycatch mortality of red snapper in the shrimp fishery). This will involve the use of interviews, logbooks, and VMS unit surveillance in the shrimp fleet. A vessel logbook will be used to collect data on shrimp fishing effort and location. Selected vessels will be required to report data on the number and average duration of tows, the number of nets used, the size of the trawl opening, the length of the head rope, the total pounds of shrimp caught, and the type of BRD used. VMS units aboard vessels will be used to transmit vessel position, course, and speed in encrypted form via satellite or cellular phone to a land-based data acquisition system. This information will be used to evaluate the accuracy of logbook reports.

The observer study will involve NMFS' random selection of approximately 100 offshore shrimp trawlers. Owners of vessels selected for observer coverage will be required to notify NMFS prior to their vessel's departure on a fishing trip. Required notification procedures will be specified in the notice of selection sent to the vessel owner. Costs associated with carrying the observers will be borne by NMFS, except for certain costs associated with a selected vessel's compliance with regulations at 50 CFR part 600 regarding observer health and safety. NMFS intends to issue a rule shortly amending regulations at 50 CFR 600.725 and 600.746 that require owners and operators of fishing vessels that carry observers to comply with guidelines, regulations, and conditions in order to ensure that the vessels are adequate and safe for the purposes of carrying an observer and allowing normal observer functions. These compliance costs are estimated at

$6,960 in aggregate for approximately 83 vessels selected to carry observers that may not already be in compliance with U.S. Coast Guard (USCG) regulations regarding vessel safety and sanitation.

Approximately 310 shrimp vessels will be required to maintain and submit to NMFS logbooks, and approximately 50 will be required to have a VMS unit (transponder) installed by NMFS at a cost borne by NMFS. Up to 460 shrimp vessels will be selected to participate in the combined observer, logbook, and VMS unit programs. Participating vessel owners are expected to incur costs of $14,080 in aggregate, or about $30.61 each. These costs will be the value of the owners' time required to participate in the data gathering programs.

Other

The NMFS Southeast Fisheries Science Center has determined that this interim rule is based on the best available scientific information. NMFS has determined that this interim rule is consistent with the requirements of section 305(c) of the Magnuson-Stevens Act regarding the promulgation of interim measures necessary to reduce overfishing for a fishery; this rule addressed the overfishing of red snapper. Specifically, this rule is necessary to provide improved scientific information regarding the effectiveness of BRDs in reducing red snapper bycatch mortality in the Gulf shrimp fishery and regarding the total shrimp fishing effort. This information is required to calculate a more reliable estimate of the total bycatch mortality of red snapper in the shrimp fishery for 1998. Based on this estimate, an appropriate portion of the red snapper TAC will be released to the commercial and recreational fisheries on September 1. Any released portion of the TAC, based on the new scientific information and calculations resulting from this rule, should maintain the current red snapper stock rebuilding program and prevent overfishing of this resource.

NMFS finds that this regulatory action is needed to reduce overfishing of red snapper in the Gulf of Mexico. NMFS issues this interim rule, effective for no more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This interim rule may be extended for an additional 180 days provided that the public has had an opportunity to comment on it. Public comments on this interim rule will be considered in determining whether to extend it.

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, Department of Commerce, has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to obtain estimates of the operational efficiencies of BRDs in reducing red snapper bycatch mortality, to improve estimates of red snapper bycatch mortality, and, thereby, to contribute to reducing overfishing of red snapper in the Gulf of Mexico. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This interim rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS prepared a Regulatory Impact Review (RIR) that describes the expected economic costs and benefits of this rule (see **ADDRESSES**). The RIR notes that most of the costs associated with this rule accrue to NMFS in terms of costs of conducting the observer program, the logbook program, the VMS unit program, and the allied research that will be used in combination with the information derived from observers, logbooks, and VMS unit programs. In addition, NMFS is expected to incur costs related to enforcing the rule and administrative costs of preparing and monitoring the rule. The total NMFS costs for the research program are estimated to be $3,110,000. Up to 460 shrimpers will be selected for participation in the observer, logbook, and VMS programs together. In aggregate, these shrimpers will incur a cost of $23,770. This cost includes an estimated $6,960 in aggregate for compliance by vessels selected for observers with USCG regulations for vessel safety and sanitation required by 50 CFR 600.725 and 600.746, as amended by a separate rule NMFS intends to issue shortly. This estimate is based on the assumption that a maximum of 83 vessels would have to make special efforts to comply with USCG dockside safety inspection requirements as a prerequisite for carrying observers. The costs related to vessel safety and sanitation are not attributed to this interim rule, but rather to USCG regulations. The remainder of the total estimated cost is the value of the shrimpers' time required to participate in these programs. Since the rule is not expected to have any effect on the status quo level of shrimp harvests or shrimp fishing effort patterns, no short-term changes in industry costs or benefits relative to status quo are expected. The benefits from this rule are those associated with providing better information for future management decisions regarding the Gulf shrimp and red snapper fisheries. These decisions are likely to affect net benefits related to the harvest of shrimp and red snapper in future years. However, there is no way to quantify these benefits at this time, Copies of the RIR are available (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains two new collection-of-information requirements subject to the PRA—namely, the requirement that, if selected, the owner or operator of a vessel in the Gulf of Mexico shrimp fishery must (1) notify NMFS in advance of each trip so that a NMFS-approved observer may be embarked and (2) have a VMS unit installed and in use when at sea. The installation and use of a VMS unit includes five elements: Notification to the Special Agent-in-Charge, NMFS, Office of Enforcement, Southeast Region (SAC), or his designee as to when the vessel will next be in port so that NMFS may install the VMS unit; the installation of the unit; the automatic sending of position information by the unit; maintenance of the unit by NMFS; and its removal by NMFS. These two new requirements have been approved by OMB under OMB control number 0648-0343. The public reporting burdens for these collections of information are estimated at 5 minutes per response for the observer notification requirement and 6 hours per response for installation and use of a VMS unit. This rule also contains the collection-of-information requirement that, if selected, a vessel owner or operator must maintain and submit fishing records. Specifically, this rule extends to vessels in the shrimp fishery of the Gulf of Mexico the requirement approved by OMB under OMB control number 0648-0016. The reporting burden is estimated at 10 minutes per response. The estimates of public reporting burdens for these collections of information include the time for reviewing instructions, searching

existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspects of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

The provisions of this interim rule provide the means for further scientific evaluation of the operational effectiveness of BRDs for reducing the bycatch mortality of juvenile red snapper in the shrimp trawl fishery. Absent scientific evidence that BRDs, under operational conditions, are more effective in reducing bycatch mortality than was previously estimated, the reserved portion of the 1998 red snapper TAC will not be released prior to the end of the year. Any delay in implementing the provisions contained in this rule would delay any potential for releasing the reserved portion of the red snapper TAC (i.e., the results of the data collection and research provisions have the potential to relieve a restriction in the near future). The potential release of reserved red snapper TAC is contingent upon positive findings from the outlined data collection and research program. Therefore, it is critical to commence this research as soon as possible. Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner, for the reasons expressed above, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. Accordingly, this rule is effective on May 14, 1998.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 13, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

§ 902.1 [Amended]

2. In § 902.1(b), in the table, under 50 CFR, the entry ''622.9'' is added in numerical order in the left column, and the corresponding entry ''–0016 and –0205'' is added in the right column.

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 622.7, paragraph (aa) is added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(aa) Fail to comply with the Gulf shrimp interim measures specified in § 622.9.

(bb) [Reserved]

5. In subpart A, § 622.9 is added to read as follows:

§ 622.9 Gulf shrimp interim measures.

(a) *Vessel logbooks.* In addition to the requirements of § 622.5(a)(1)(iii), the owner or operator of a vessel that fishes for shrimp in the Gulf EEZ who is selected to report by the SRD must maintain fishing records on forms available from the SRD. The owner or operator must submit completed fishing records to the SRD postmarked not later than 7 days after the end of each fishing trip. If no fishing occurred during a calendar month, the owner or operator must submit a report so stating on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

(b) *Observer coverage.* (1) If a vessel is selected by the SRD for observer coverage, the owner or operator of the vessel that fishes for shrimp in the Gulf EEZ must carry a NMFS-approved observer aboard the vessel.

(2) When notified in writing by the SRD that his or her vessel has been selected to carry a NMFS-approved observer, the owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the port, dock, date, and time of departure and the port, dock, date, and time of landing.

(3) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(i) Provide accommodations and food that are equivalent to those provided to the crew.

(ii) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(iii) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(iv) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(v) Allow the observer to inspect and copy the vessel's log, communications logs, and any records associated with the catch and distribution of fish for that trip.

(vi) On or after May 14, 1998, comply with the observer's instructions to make an installed bycatch reduction device (BRD) inoperative; use of a trawl net with an inoperative BRD in accordance with the observer's instructions while the observer is aboard is not a violation of § 622.41(h)(1).

(c) *Vessel monitoring.* (1) If a vessel is selected by the SRD for monitoring, the owner or operator of the vessel that fishes for shrimp in the Gulf EEZ must carry a NMFS-supplied vessel monitoring system (VMS) unit on board the vessel.

(2) Upon selection by the SRD for monitoring, the vessel owner or operator must advise the Special Agent-in-Charge, NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL (SAC) or his designee by telephone (813–570–5344) as to when the vessel will next be in port so that NMFS may arrange for installation of the VMS unit. During installation of the VMS unit, the owner or operator must provide NMFS access to the vessel's on-board power supply.

(3) After the VMS unit is installed, the vessel owner or operator must maintain power to the VMS unit when the vessel is at sea. When the vessel is in port, the owner or operator must provide access to the VMS unit for maintenance, repair, inspection, or removal.

(4) No person may interfere with, impede, delay, or prevent the installation, maintenance, repair,

inspection, or removal of a VMS unit or interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit, or attempt any of the same.

[FR Doc. 98–13290 Filed 5–14–98; 3:51pm am]

BILLING CODE 3510–22–F

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. 98–16]

RIN 1515–AB95

Drawback; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Correcting amendments.

SUMMARY: Customs published in the **Federal Register** of March 5, 1998, a document issuing final regulations regarding drawback (T.D. 98–16). This document contains corrections to those final regulations.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Berger, Regulations Branch, Office of Regulations and Rulings, (202–927–1605).

SUPPLEMENTARY INFORMATION:

Background

The final regulations relating to drawback that are the subject of these corrections were published as T.D. 98–16 in the **Federal Register** (63 FR 10970), on March 5, 1998. Corrections to these regulations were published in the **Federal Register** on March 17, 1998 (63 FR 13105) and on March 31, 1998 (63 FR 15287).

Need For Corrections

As published, it has come to Customs attention that the final regulations still contain errors which may prove to be misleading. This document corrects those errors.

List of Subjects in 19 CFR Part 191

Canada, Commerce, Customs duties and inspection, Exports, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements (North American Free Trade Agreement).

PART 191—DRAWBACK

Accordingly, part 191, Customs Regulations (19 CFR part 191) is corrected by making the correcting amendments set forth below.

1. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

§ 191.3 [Amended]

2. In § 191.3(a)(3), the parenthetical, ''(see § 101.1(i) of this chapter)'', is revised to read, ''(see § 101.1 of this chapter)''.

§ 191.6 [Amended]

3. In § 191.6(c)(3), the reference to ''§ 191.32(c)(2)'' is revised to read, ''§ 191.32(c)''.

§ 191.14 [Amended]

4. In § 191.14(c)(3)(iii)(D), at the end of the penultimate sentence, immediately before the period, the following language is added: ''; the March 20 receipt (50 units at $1.08) is not yet attributed to withdrawals for export''.

5. In § 191.14(c)(3)(iv)(C), in the penultimate sentence, after the phrase, ''February 25 (50 units at $1.05),'', the following language is added: ''March 5 (50 units at $1.06),''.

§ 191.92 [Amended]

6. In § 191.92(g), in the first sentence, the term ''stay,'' is removed.

Dated: May 13, 1998.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 98–13237 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL169–1a; FRL–6012–7]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 6, 1998, the State of Illinois submitted to EPA amended rules for controlling Volatile Organic Material (VOM) emissions from wood furniture coating operations in the Chicago and Metro-East (East St. Louis) ozone nonattainment areas, as a requested revision to the ozone State Implementation Plan (SIP). VOM, as defined by the State of Illinois, is identical to ''Volatile Organic Compounds'' (VOC), as defined by EPA. VOC is an air pollutant which combines with nitrogen oxides in the atmosphere to form ground-level ozone, commonly known as smog. Ozone pollution is of particular concern because of its harmful effects upon lung tissue and breathing passages. This plan was submitted to meet the Clean Air Act (Act) requirement for States to adopt Reasonably Available Control Technology (RACT) rules for sources that are covered by Control Techniques Guideline (CTG) documents. This rulemaking action approves, through direct final, the Illinois SIP revision request.

DATES: The ''direct final'' rule is effective on July 20, 1998, unless EPA receives adverse or critical written comments by June 18, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Copies of the revision request and EPA's Technical Support Document (TSD) for this rulemaking action are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(2) of the Act requires all moderate and above ozone nonattainment areas to adopt RACT rules for sources covered by CTG documents.[1] In Illinois, the Chicago area (Cook, DuPage, Kane, Lake, McHenry, Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as ''severe'' nonattainment for ozone, and the Metro-East area (Madison, Monroe, and St. Clair Counties) is classified as ''moderate'' nonattainment. See 40 CFR 81.314.

On September 9, 1994, EPA approved and incorporated into the SIP a 1993

[1] A definition of RACT is cited in a General Preamble-Supplement published at 44 FR 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility. CTGs are documents published by EPA which contain information on available air pollution control techniques and provide recommendations on what the EPA considers the ''presumptive norm'' for RACT.

version of VOM control rules for wood furniture coating operations in the Chicago and Metro-East ozone nonattainment areas (59 FR 46562). On October 26, 1995, EPA approved a revision to these rules' source size applicability threshold from 100 tons or more of VOM per year Maximum Theoretical Emissions (MTE) to 25 tons of VOM or more per year Potential To Emit (PTE) (60 FR 54810). On May 20, 1996, EPA issued a CTG document providing the recommended presumptive norm for RACT for wood furniture coating operations. The CTG was produced as the result of a regulatory negotiation between representatives from industry, environmental groups, and State and local agencies. On May 27, 1997, the Illinois Environmental Protection Agency (IEPA) filed a proposal with the Illinois Pollution Control Board (Board) to revise its existing wood furniture coating rules to become consistent with the CTG requirements.

IEPA held public hearings on the wood furniture coating rule amendments on August 5, 1997, in Edwardsville, Illinois, and August 13, 1997, in Chicago, Illinois. On January 22, 1998, the Board adopted the proposed amendments in a Final Opinion and Order. On February 13, 1998, the amended rules were published in the *Illinois Register.* The effective date of the rules is February 2, 1998. On March 5, 1998, the rules were submitted as a requested revision to the SIP for ozone. On March 25, 1998, EPA sent a finding of completeness of the submittal.

The submittal includes the following new or revised rules.

Part 211: Definitions and General Provisions

Subpart B: Definitions

211.1467 Continuous Coater
211.1520 Conventional Air Spray
211.6420 Strippable Spray Booth Coating
211.7200 Washoff Operations

Part 218: Organic Material Emission Standards and Limitations for the Chicago Area

Subpart F: Coating Operations

218.204 Emission Limitations
218.205 Daily-weighted Average Limitations
218.210 Compliance Schedule
218.211 Recordkeeping and Reporting
218.215 Wood Furniture Coating Averaging Approach
218.216 Wood Furniture Coating Add-On Control Use
218.217 Wood Furniture Coating Work Practice Standards

Part 219: Organic Material Emission Standards and Limitations for the Metro East Area

Subpart F: Coating Operations

219.204 Emission Limitations
219.205 Daily-weighted Average Limitations
219.210 Compliance Schedule
219.211 Recordkeeping and Reporting
219.215 Wood Furniture Coating Averaging Approach
219.216 Wood Furniture Coating Add-On Control Use
219.217 Wood Furniture Coating Work Practice Standards

The rules contained in Part 218 are identical to those in part 219 except for the areas of applicability. Part 218 applies to the Chicago area, while Part 219 applies to the Metro-East area.

II. Analysis of State Submittal

EPA has reviewed the March 6, 1998, submittal for consistency with the wood furniture CTG's model rule to determine whether the rules meet RACT and are enforceable. The following is a summary of the SIP revision and EPA's analysis of the rules. For the complete requirements of this SIP revision, interested parties should refer to the State regulations. For more details on EPA's analysis, EPA's TSD for this rulemaking can be obtained from the Region 5 office listed above.

Applicability and Compliance Date

Illinois wood furniture coating rules apply to sources (1) with wood furniture coating operations and (2) that have a potential to emit 25 tons of VOM or more per year, which is consistent with the CTG's model rule. The compliance date to meet the new requirements in the State's wood furniture coating rules is March 15, 1998.

Emission Limitations

The rules have been amended to modify the value and the units of measure of the VOM content limitations for wood furniture coating topcoats and sealers. These new emission limitations, added at section 218/219.204(l)(2), are as follows:

Coating	Kilograms (kg) VOM/ kg solids	Pounds (lb) VOM/lb solids
Topcoat	0.8	0.8
Non-acid-cured alkyd amino vinyl sealer	1.9	1.9
Non-acid-cured alkyd amino conversion varnish	1.8	1.8
Acid-cured alkyd amino vinyl sealer	2.3	2.3
Acid-cured alkyd amino conversion varnish ...	2.0	2.0

Alternatively, sources can comply with the topcoat and sealer requirements through an averaging program or through an add-on control device. Sources using an averaging approach must demonstrate that emissions from participating coating lines, on a daily basis, are no greater than 90 percent of what they would be if compliant coatings were being used. For sources opting to use an add-on control device, sources must demonstrate that the overall capture and control efficiency of the control devices secures emission reductions equivalent to compliance with the coating VOM content limits. Sections 218/219.215 and 218/219.216 provide the necessary equations to determine compliance with the averaging or add-on control approach. These equations are based upon similar provisions found under the CTG's model rule.

The rules as amended retain emission limitations for other categories of wood furniture coatings that were incorporated into the SIP on September 9, 1994, including opaque stain, non-topcoat pigmented coating, repair coating, semi-transparent stain, and wash coat (59 FR 46562). These limitations remain in place under sections 218/219.204(l)(3) so as to avoid emissions backsliding.

Besides the revised topcoat and sealer emission limitations, the Illinois rules have been amended to add VOM control requirements for sources using either wood furniture coating spray booths or continuous coaters. Affected sources using spray booths shall not use strippable spray coating containing more than 0.8 kg VOM/kg solids (0.8 lb VOM/lb solids), as applied. For affected sources using continuous coaters to apply topcoats and sealers, the reservoir used for the continuous coaters shall use an initial coating which complies with the VOM content limits listed in the table above, and the viscosity of the coating in each reservoir shall always be greater than or equal to the viscosity of the initial coating in the reservoir. The viscosity of the reservoir shall be monitored in accordance with requirements provided in the rules. These control requirements are consistent with the CTG model rule.

Work Practices

Illinois' amended rules also include new or revised work practice standards dealing with coating application and cleaning methods. Under the previous rule requirements, affected sources could only use the following methods to apply coatings: airless spray application system, electrostatic bell or disc application system, heated airless spray application system, roller coating, brush or wipe coating application system, dip coating application system, or high volume low pressure application system. To become consistent with the CTG, the rules are now modified to generally prohibit the use of conventional air spray application, defined as a method in which coating is atomized by mixing it with compressed air at an air pressure greater than 10 lb per square inch (gauge) at the point of atomization.

Certain exemptions are allowed, however, when applying repair coats in certain circumstances, when applying coatings with a VOM content no greater than 1 kg VOM/kg solids (1 lb VOM/lb solids) as applied, when guns are aimed and triggered automatically, or when an add-on control device is used. These exemptions are also consistent with the CTG.

As for cleaning requirements, affected sources shall not clean spray booth components compounds containing more than 8.0 percent, by weight, of VOM. The cleaning of conveyors, continuous coaters and their enclosures, and metal filters are exempt from this requirement. If a spray booth is being refurbished, then the affected source is allowed to use no more than 1.0 gallon of noncompliant organic solvent to prepare the spray booth prior to applying the spray booth coating. These requirements are consistent with the CTG.

Other cleaning requirements added to the rules include the following: sources must use closed containers when storing or disposing coating, cleaning, and washoff materials; sources must also pump or drain all organic solvent used for line cleaning into closed containers; sources must collect all organic solvent used to clean spray guns in closed containers; and sources must control emissions from washoff operations by using closed tanks. These cleaning requirements are all consistent with the CTG.

Testing

The Illinois wood furniture coating rules as amended retain the coating testing and add-on control device installation, operation, and monitoring requirements under sections 218/219.105. These sections were approved by EPA on September 9, 1994 (59 FR 46562), and are consistent with the CTG.

Certification, Recordkeeping, and Reporting

To ensure compliance, certification, recordkeeping, and reporting requirements have been added to the rules. Wood furniture coating operations in the Chicago and Metro-East ozone nonattainment areas which are otherwise exempt because their PTE is less than 25 tons of VOM per year must certify their exemption with IEPA in accordance with section 218/219.211. Those sources covered under the wood furniture coating rules must certify compliance by March 15, 1998, upon initial start-up of a new coating line, or upon changing the method of compliance.

Daily records must be kept for a period of three years to show compliance with the emission limitations, the averaging approach, or the add-on control requirements. Sources which must comply with the new topcoat and sealer requirements (either the individual limits, the averaging approach, or the add-on control requirements) must keep daily records of the weight of VOM per weight of solids in each coating as applied each day on each coating line, and keep the certified product data sheets for each coating used. To comply with the averaging approach under 218/219.215, an affected source must operate pursuant to federally enforceable state operating permit conditions containing a detailed description of the source's averaging program. What this description must include is specified under 218/219.215. In addition to daily coating records, sources using averaging must also keep daily records of the calculations showing compliance with either of the averaging equations provided under 218/219.215. For sources complying with add-on control requirements under 218/219.216, these sources must additionally keep control device monitoring data as well as operating and maintenance logs on a daily basis. Sources which need to comply with the spray booth or continuous coater requirements must also keep daily records as specified in the rules. Exceedances of the control requirements, or change of compliance method, must be reported to IEPA within 30 days. These requirements are generally consistent with the CTG and with EPA's VOC RACT policy.

Conclusion

Based on review of the March 6, 1998, SIP submittal's comparison to the CTG model rule, the EPA finds the State's wood furniture coating rules constitute RACT and are enforceable. Therefore, the March 6, 1998 submittal satisfies the requirement under section 182(b)(2) of the Act to adopt RACT level rules for wood furniture coating operations.

III. Final Rulemaking Action

In this rulemaking action, EPA approves the March 6, 1998, Illinois SIP revision submittal, which will make the amended Illinois wood furniture coating rules federally enforceable. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified adverse or critical written comments be filed. This action will become effective without further notice unless the Agency receives relevant adverse written comment on the parallel proposed rule (published in the proposed rules section of this **Federal Register**) by June 18, 1998. Should the Agency receive such comments, it will publish a final rule informing the public that this action did not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 20, 1998.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities

with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping.

Dated: April 29, 1998.

Barry C. DeGraff,

Acting Regional Administrator.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(140) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(140) On March 5, 1998, the State of Illinois submitted amended rules for the control of volatile organic material emissions from wood furniture coating operations in the Chicago and Metro-East (East St. Louis) ozone nonattainment areas, as a requested revision to the ozone State Implementation Plan. This plan was submitted to meet the Clean Air Act requirement for States to adopt Reasonably Available Control Technology rules for sources that are covered by Control Techniques Guideline documents.

(i) Incorporation by reference

Illinois Administrative Code, Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources.

(A) Part 211: Definitions and General Provisions, Subpart B; Definitions, 211.1467 Continuous Coater, 211.1520 Conventional Air Spray, 211.6420 Strippable Spray Booth Coating, 211.7200 Washoff Operations, amended at 22 Ill. Reg. 3497, effective February 2, 1998.

(B) Part 218: Organic Material Emission Standards and Limitations for the Chicago Area, Subpart F: Coating Operations 218.204 Emission Limitations, 218.205 Daily-weighted Average Limitations, 218.210 Compliance Schedule, 218.211 Recordkeeping and Reporting, 218.215 Wood Furniture Coating Averaging Approach, 218.216 Wood Furniture Coating Add-On Control Use, 218.217 Wood Furniture Coating Work Practice Standards, amended at 22 Ill. Reg. 3556, effective February 2, 1998.

(C) Part 219: Organic Material Emission Standards and Limitations for the Metro East Area, Subpart F: Coating Operations 219.204 Emission Limitations, 219.205 Daily-weighted Average Limitations, 219.210 Compliance Schedule, 219.211 Recordkeeping and Reporting, 219.215 Wood Furniture Coating Averaging Approach, 219.216 Wood Furniture Coating Add-On Control Use, 219.217 Wood Furniture Coating Work Practice Standards, amended at 22 Ill. Reg. 3517, effective February 2, 1998.

[FR Doc. 98–13299 Filed 5–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI67–01–7275; FRL–6003–6]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) is promulgating a correction to the State Implementation Plan (SIP) for the State of Michigan regarding the State's emission limitations and prohibitions for air contaminant or water vapor. EPA has determined that this rule was erroneously incorporated into the SIP. EPA is removing this rule from the approved Michigan SIP because the rule does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the Clean Air Act, as amended in 1990 (''the Act''), regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

DATES: This rule is effective on July 20, 1998 unless the Agency receives

relevant adverse comments by June 18, 1998. Should the Agency receive such comments, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Victoria Hayden at (312) 886–4023 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Victoria Hayden, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886–4023.

SUPPLEMENTARY INFORMATION:

I. Correction to SIP

In a letter dated January 29, 1998, the Michigan Department of Environmental Quality raised the issue of whether Michigan's air quality Administrative Rule, R336.1901 (Rule 901) had a reasonable connection to the NAAQS-related air quality goals of the Act, and whether it properly was approved into the Michigan SIP. Rule 901 is a general rule that prohibits the emission of an air contaminant which is injurious to human health or safety, animal life, plant life of significant economic value, property, or which causes unreasonable interference with the comfortable enjoyment of life and property. In the January 29, 1998 letter, Michigan states that Rule 901 is a State rule that has been primarily used to address odors and other local nuisances. According to the State, Rule 901 historically has not been used to attain nor maintain any NAAQS nor to satisfy any other provision of the Act and, therefore, does not belong in the SIP. EPA, pursuant to section 110(k)(6), is agreeing to correct the SIP since Rule 901 is not reasonably connected to the NAAQS-related air quality goals of the Act.

Section 110(k)(6) of the amended Act provides: Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Since the State of Michigan's Rule 901 has no reasonable connection to the NAAQS-related air quality goals of the Act, and since the State has requested that EPA remove this rule from the approved SIP, EPA has found the approval of this State rule was in error. Consequently, EPA is removing Rule 901 of the Michigan air quality Administrative Rules from the approved Michigan SIP pursuant to section 110(k)(6).

II. EPA Final Rulemaking Action

The EPA is removing Rule 901 of the Michigan air quality Administrative Rules from the approved Michigan SIP pursuant to section 110(k)(6) of the Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 20, 1998, without further notice unless the Agency receives relevant adverse comments by June 18, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 20, 1998 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

In this action, EPA is removing certain prohibitions from the federally enforceable SIP. Therefore, because EPA is not imposing any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. EPA, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action removes from the federally enforceable SIP certain prohibitions on the emission of air contaminants, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in

today's **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping.

Dated: April 8, 1998.

Michelle D. Jordan,

Acting Regional Administrator, Region 5.

40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C 7401 et seq.

Subpart X-Michigan

2. Section 52.1174 is amended by adding paragraph (q) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(q) Correction of approved plan—Michigan air quality Administrative Rule, R336.1901 (Rule 901)—Air Contaminant or Water Vapor, has been removed from the approved plan pursuant to section 110(k)(6) of the Clean Air Act (as amended in 1990).

[FR Doc. 98–13295 Filed 5–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[GA–37–9811a; FRL–6003–8]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Sections 111(d) and 129 State Plan submitted by the Georgia Department of Natural Resources (DNR) for the State of Georgia on November 13, 1997, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW).

DATES: This direct final rule is effective July 20, 1998 unless adverse or critical comments are received by June 18, 1998. If the direct final rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott M. Martin at the Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file GA 37–9811a. The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Davis at (404) 562–9127 or Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR Part 60, Subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated Subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb apply only to MWC units with individual capacity to combust more than 250 tons per day of MSW (large MWC units).

Under section 129 of the Act, EG are not Federally enforceable. Section 129(b)(2) of the Act requires states to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR Part 60, Subpart B. EPA originally promulgated the Subpart B provisions on November 17, 1975. EPA amended Subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

This action approves the State Plan submitted by the Georgia DNR for the State of Georgia to implement and enforce Subpart Cb, as it applies to large MWC units only.

II. Discussion

The Georgia DNR submitted to EPA on November 13, 1997, the following in their 111(d) and 129 State Plan for implementing and enforcing the EG for existing MWCs under its direct jurisdiction in the State of Georgia: Legal Authority; Inventory of MWC Plants/Units; MWC Emissions Inventory; Emission Limits and Standards; Compliance Schedule; Procedures for Testing and Monitoring Sources of Air Pollutants, Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments and Public Hearing Summary; Submittal of Progress Reports to EPA; Federally Enforceable State Operating Permit (FESOP) for the Savannah Energy Systems Company MWC facility; Pollution Control Project review for the Savannah Energy Systems Company MWC facility; and applicable State of Georgia statutes and rules of the Georgia DNR. The Georgia DNR submitted its Plan after the Court of Appeals vacated Subpart Cb as it applies to small MWC units. Thus, the Georgia State Plan covers only large MWC units. As a result of the *Davis* decision and subsequent vacatur order,

there are no EG promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of the Georgia State Plan for MWCs addresses only those parts of the Georgia State Plan which affect large MWC units. Small units are not subject to the requirements of the Federal Rule and not part of this approval. Until EPA again promulgates EG for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve State Plans applying state rules to small MWC units.

The approval of the Georgia State Plan is based on finding that: (1) the Georgia DNR provided adequate public notice of public hearings for the proposed plan and the FESOP which allow the Georgia DNR to implement and enforce the EG for large MWCs, and (2) the Georgia DNR also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facility; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In Attachment A of the Plan, the Georgia DNR cites the following references for the legal authority: State of Georgia Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program; The Georgia Air Quality Act, Sections 12–9–1 through 12–9–25; The Rules of the Georgia Department of Natural Resources for Air Quality Control, Chapter 391–3–1; the Georgia Natural Resources Act; the Georgia Administrative Procedures Act; and the Official Code of Georgia Annotated. These statutes and regulations are contained in Attachments H, I, J, and K. On the basis of the Attorney General's Opinion, the statutes, and rules of the State of Georgia, the State Plan and FESOP are approved as being at least as protective as the Federal requirements for existing large MWC units.

The Georgia DNR cites all emission standards and limitations for the major pollutant categories as conditions in the FESOP for Savannah Energy Systems, the only designated facility in the State of Georgia subject to these standards and limitations. These standards and limitations in the FESOP have been approved as being at least as protective as the Federal requirements contained in Subpart Cb for existing large MWC units.

The Georgia DNR submitted the compliance schedule for Savannah Energy Systems, the only large MWC under its direct jurisdiction in the State of Georgia. The FESOP contains conditions consistent with 40 CFR Part 60, subparts B and Cb, specifications for compliance schedules. This portion of the Plan and FESOP has been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

In Attachment B, the Georgia DNR submitted an emissions inventory of all designated pollutants for Savannah Energy Systems, the only large MWC under their direct jurisdiction in the State of Georgia. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing large MWC units.

The Georgia DNR includes its legal authority to require owners and operators of designated facilities to maintain records and report to its agency the nature and amount of emissions and any other information that may be necessary to enable its agency to judge the compliance status of the facilities in Attachment C of the State Plan and as conditions in the FESOP for Savannah Energy Systems. The Georgia DNR also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with emission standards that apply, available to the general public. In Attachment D of the State Plan, the Georgia DNR submitted its Procedures for Testing and Monitoring Sources of Air Pollutants, Section 2.2b for Municipal Waste Combustors, to support the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These State of Georgia rules are contained in Attachments D, H, I, J, and K of the Plan. This portion of the Plan and FESOP have been reviewed and approved as being at least as protective as the Federal requirements for existing large MWC units.

As stated on page A–3 of the Plan, the Georgia DNR will provide progress reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.

Final Action

EPA is approving the above referenced State Plan. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 20, 1998 without further notice unless the Agency receives relevant adverse comments by June 18, 1998.

If the EPA receives such comments, then EPA will publish a timely document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 20, 1998 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111(d) and section 129(b)(2) of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose

any new requirements, the Regional Administrator certifies that it does not have a significant impact on any small entities affected.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: March 16, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart L—Georgia

2. Part 62.2600 is amended by adding paragraphs (b)(4) and (c)(3) to read as follows:

§ 62.2600 Identification of plan.

* * * * *

(b) * * *

(4) State of Georgia Plan for Implementation of 40 CFR Part 60, Subpart Cb, For Existing Municipal Waste Combustors, submitted on November 13, 1997, by the Georgia Department of Natural Resources.

(c) * * *

(3) Existing municipal waste combustors.

3. Subpart L is amended by adding a new § 62.2606 and a new undesignated center heading to read as follows:

METALS, ACID GASES, ORGANIC COMPOUNDS AND NITROGEN OXIDE EMISSIONS FROM EXISTING MUNICIPAL WASTE COMBUSTORS WITH THE CAPACITY TO COMBUST GREATER THAN 250 TONS PER DAY OF MUNICIPAL SOLID WASTE

§ 62.2606 Identification of sources.

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW) at the following MWC sites:

(1) Savannah Energy Systems Company, Savannah, Georgia.

(2) [Reserved].

[FR Doc. 98–13117 Filed 5–18–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7688]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be

available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: New Britain, city of, Hartford County.	090032	August 22, 1973, Emerg.; July 16, 1981 Reg.; May 18, 1998 Susp.	May 18, 1998 ...	May 18, 1998.
Maine: Alfred, town of, York County	230191	July 23, 1975, Emerg.; July 16, 1990, Reg.; May 18, 1998, Susp.	.....do	Do.
New Hampshire:				
Bristol, town of, Grafton County	330047	May 5, 1976, Emerg.; April 15, 1980, Reg.; May 18, 1998, Susp.	.....do	Do.
Rindge, town of, Cheshire County	330189	October 11, 1977, Emerg.; July 21, 1978, Reg.; May 18, 1998, Susp.	.....do	Do.
Region II				
New York: South Bristol, town of, Ontario County.	360606	July 17, 1974, Emerg.; July 3, 1985, Reg.; May 18, 1998, Susp.	.....do	Do.
Region IV				
Mississippi: Laurel, city of, Jones County	280092	December 30, 1971, Emerg.; September 15, 1977, Reg.; May 18, 1998, Susp.	.....do	Do.
North Carolina: High Point, city of, Davidson, Guilford, Randolph Counties.	370113	August 5, 1974, Emerg.; November 1, 1979, Reg.; May 18, 1998, Susp.	.....do	Do.
Tennessee:				
Eagleville, city of, Rutherford County	470166	August 8, 1979, Emerg.; June 17, 1986, Reg.; May 18, 1998, Susp.	.....do	Do.

State/Location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
La Vergne, city of, Rutherford County ...	470167	September 8, 1975, Emerg.; June 15, 1984, Reg.; May 18, 1998, Susp.	.....do	Do.
Rutherford County, unincorporated areas.	470165	January 30, 1975, Emerg.; June 15, 1984, Reg.; May 18, 1998, Susp.	.....do	Do.
Region V				
Michigan: Grosse Point, city of, Wayne County.	260230	December 8, 1972, Emerg.; January 3, 1979, Reg.; May 18, 1998, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: May 12, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–13278 Filed 5–18–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted April 29, 1998, and released May 8, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 252A and adding Channel 255C at Oraibi, and by removing Channel 269A and adding Channel 269C2 at Springerville.

3. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 252A and adding Channel 253A at Peru.

4. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 292A and adding Channel 292C3 at Ankeny.

5. Section 73.202(b), the Table of FM Allotments under Maryland, is amended by removing Channel 263A and adding Channel 265A at Hurlock.

6. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 281C3 and adding Channel 281C1 at East Helena.

7. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 253A and adding Channel 256A at Lake George.

8. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 246C2 and adding Channel 246C1 at Hatteras.

9. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 257A and adding Channel 257C3 at Cordell.

10. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 290A and adding Channel 290C3 at Centerville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–13167 Filed 5–18–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–194; RM–9128]

Radio Broadcasting Services; Shelley and Island Park, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for rule making filed on behalf of Woodcom, Inc., permittee of a new FM station to operate on Channel 300C at Shelley, Idaho, this document substitutes Channel 292C1 for Channel 300C at Shelley, Idaho, and modifies the authorization issued to Woodcom, Inc. (File No. BPH–950123MH) to specify operation on the lower class channel. Additionally, to accommodate the modification at Shelley, this document substitutes Channel 275C for Channel 293C at Island Park, Idaho, for which an application is pending, instead of previously proposed Channel 300C. Coordinates used for Channel 292C1 at Shelley are 43–06–45 and 112–29–34. Reference coordinates used for Channel 275C at Island Park are 44–23–30 and 111–18–42. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–194, adopted April 29, 1998, and released May 8, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 293C and adding Channel 275C at Island Park.

3. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 300C and adding Channel 292C1 at Shelley.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–13170 Filed 5–18–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980505118–8118–01; I.D.042798C]

RIN 0648–AL14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Bycatch Reduction Device Certification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; request for comments.

SUMMARY: This interim rule certifies the Jones-Davis and Gulf fisheye bycatch reduction devices (BRDs) for use in the Gulf of Mexico shrimp fishery. The intended effects of this rule are to provide flexibility to Gulf shrimp trawlers for complying with the requirement to use a BRD. This will allow shirmpers to select a BRD based on how it matches the operating conditions their vessel encounters. This should enhance compliance, help minimize shrimp loss, and further increase bycatch reduction and, thus, further reduce overfishing of red snapper.

DATES: This rule is effective May 14, 1998, through November 16, 1998. Comments must be received no later than June 18, 1998.

ADDRESSES: Comments on this interim rule must be mailed to, and copies of documents supporting this rule may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702. Requests for copies of construction and installation instructions for the Jones-Davis and Gulf fisheye BRDs should be addressed to the Chief, Harvesting Systems Division, Mississippi Laboratories, Southeast Fisheries Science Center, NMFS, P.O. Drawer 1207, Pascagoula, MS 39568–1207.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, phone: 813–570–5305 or fax: 813–570–5583.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Shrimp trawling results in a significant, inadvertent bycatch of non-target finfish and invertebrates, most of which are discarded dead. Recent concerns about bycatch in the Gulf of Mexico have focused on the high mortality of juvenile (ages 0 and 1) red snapper, a valuable reef fish species for commercial and recreational fisheries.

The Council developed Amendment 9 to the FMP to reduce shrimp trawler bycatch of juvenile red snapper while, to the extent practicable, minimizing adverse effects on the shrimp fishery. The red snapper stock of the Gulf of Mexico is overfished. Even if the directed fisheries for adult red snapper were eliminated, the bycatch of juvenile red snapper in shrimp trawls would still need to be reduced for the adult spawning stock to recover under the Council's rebuilding schedule.

The critical management measure in Amendment 9 is the required use of NMFS-certified BRDs in shrimp trawls towed in the Gulf of Mexico exclusive economic zone (EEZ), shoreward of the 100–fm (183–m) depth contour west of 85°30' W. long., the approximate longitude of Cape San Blas, Florida. To be certified, a BRD must meet the FMP's bycatch reduction criterion for red snapper (i.e., it must reduce the shrimp trawl bycatch mortality of age 0 and 1 red snapper by a minimum of 44 percent from the average level of fishing mortality on these age groups during the period 1984–89).

The final rule implementing Amendment 9 (63 FR 1813, April 14, 1998) certified the fisheye BRD for use in the Gulf shrimp fishery effective May 14, 1998, the effective date of the requirement to use BRDs in the Gulf EEZ. The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rods of at least 1/4 inch (6.35 mm) diameter, which is inserted into the codend of the trawl to form an escape opening. The fisheye BRD must have an opening dimension of at least 5 inches (12.7 cm) and a total opening area of at least 36 in^2 (232.3 cm^2). The fisheye BRD must be installed at the top center of the codend of the trawl to create an opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 11 ft (3.4 m) from the codend drawstring (tie-off rings) or 70 percent of the distance between the codend drawstring and the forward edge of the codend, excluding any extension, whichever is the shorter distance. The fisheye, located within this position of the codend, also has been certified for use by penaeid shrimp trawlers in the South Atlantic EEZ.

Recent research indicates that the Jones-Davis BRD and the Gulf fisheye BRD also meet the Gulf red snapper bycatch reduction criterion. This rule certifies these two BRDs for use in the Gulf of Mexico shrimp fishery on an interim basis. NMFS expects to certify these two BRDs permanently after implementation of a BRD testing protocol later this year.

The Gulf fisheye BRD is constructed the same as the fisheye BRD but has different installation requirements. The Gulf fisheye must be installed in the codend of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 12.5 ft (3.81 m) and

no less than 8.5 ft (2.59 m) from the codend tie-off rings. The Gulf fisheye may not be offset by more than 15 meshes perpendicular to the top center of the codend. This provides a broader range of allowable installation locations within the codend compared with the originally certified fisheye. Specifically, it allows for an offset of no more than 15 meshes perpendicular to top center (left or right) and allows for more forward placement in the codend—an alternative that appears to minimize shrimp loss while meeting the red snapper bycatch reduction criterion.

The Jones-Davis BRD is a funnel type BRD. It incorporates the same basic design principle as the expanded mesh and the extended funnel BRDs that were certified for use in the South Atlantic EEZ only, except that the fish escape openings are created by cutting windows around the funnel rather than using large-mesh sections. The Jones-Davis BRD design also incorporates a webbing, cone fish deflector behind the funnel which acts as a fish stimulator, discouraging fish from passing into the aft portion of the codend and, thus, increasing fish bycatch reduction.

Specifications for these BRDs are set forth in Appendix D to 50 CFR part 622. Information, including diagrams of the Gulf fisheye and Jones-Davis BRDs and construction and installation instructions, is also available to aid fishermen and gear manufacturers (see **ADDRESSES**).

Certification of the Jones-Davis and Gulf fisheye BRDs provides Gulf shrimp trawlers three BRD options from which to choose. These options will allow shrimpers to select a BRD based on how it matches the operational conditions that their trawler encounters. This should enhance compliance, help minimize shrimp loss, and further increase bycatch reduction, thus contributing to further reduction in the overfishing of Gulf red snapper.

NMFS finds that the timely regulatory action provided by this interim rule is necessary to reduce overfishing of red snapper in the Gulf of Mexico. NMFS issues this interim rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. This interim rule may be extended for an additional 180 days, provided that the public has had an opportunity to comment on the interim rule. Public comments on this interim rule will be considered in determining whether to maintain or extend this rule to address overfishing of red snapper.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to enhance compliance with the BRD requirement for the Gulf shrimp fishery, improve effectiveness of bycatch reduction, and, thereby, reduce overfishing of red snapper in the Gulf of Mexico. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This interim rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS prepared a regulatory impact review (RIR) that provides an estimate of the costs and benefits of this rule. The RIR notes that the only identifiable costs associated with this rule are administrative costs of rule preparation; this cost has been estimated at $5,000. This rule is expected to have positive effects on shrimp harvests and effort patterns because shrimpers will have the ability to choose among three BRD options instead of having to use the one BRD that was certified in Amendment 9. The positive effects will accrue because different shrimpers employ different harvesting tactics, pursue different shrimp species, operate in different geographical areas, and operate at varying times during the year. These differences in shrimp harvesting operations and conditions make it more efficient overall if a variety of BRDs are available. Over time, it is fully expected that a mix of available BRDs will be used to meet the BRD requirement. While the resulting benefits cannot be quantified, they may be fairly large. It is also expected that given the expanded choice of BRDs, compliance will be enhanced and the reduction in bycatch mortality will be increased relative to the status quo of a single BRD choice; therefore, there should be increased benefits to the red snapper fishery. Copies of the RIR are available (see **ADDRESSES**).

This rule certifies the Jones-Davis and Gulf fisheye BRDs for use in the Gulf shrimp fishery, thereby providing shrimp trawlers flexibility in complying with the BRD requirement. This should enhance the compliance rate and reduce the bycatch mortality rate, and, thus, reduce the overfishing of Gulf red snapper. Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as the delay associated with such procedures would be contrary to the public interest.

Similarly, under 5 U.S.C. 553(d)(3), the Assistant Administrator finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. This rule imposes no additional regulatory burden but does relieve a restriction by providing Gulf shrimp trawlers a choice of certified BRDs that may be used to comply with the BRD requirement that becomes effective on May 14, 1998. To the extent that this rule relieves restrictions by providing a choice, it is not subject to a delay in effective date under 5 U.S.C. 553(d). This rule will be effective May 14, 1998, the implementation date of the BRD requirement.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 13, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Effective May 14, 1998, through November 16, 1998, in § 622.41, paragraph (h)(2) is suspended and paragraph (h)(3) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(h) * * *

(3) *Certified BRDs.* The following BRDs are certified for use by shrimp trawlers in the Gulf EEZ. Specifications of these certified BRDs are contained in Appendix D to this part.

(i) Fisheye

(ii) Gulf fisheye.

(iii) Jones-Davis.

3. Effective May 14, 1998, through November 16, 1998, in Appendix D to part 622, paragraphs D and E are added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

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D. *Gulf fisheye.*

1. *Description.* The Gulf fisheye BRD is a cone-shaped rigid frame constructed from

aluminum or steel that is inserted into the top center of the codend, or is offset not more than 15 meshes perpendicular to the top center of the codend, to form an escape opening.

2. *Minimum Construction and Installation Requirements.* The Gulf fisheye is a cone-shaped rigid frame constructed of aluminum or steel rods. The rods must be at least 1/4–inch (6.35–mm) diameter. Any dimension of the escape opening must be at least 5.0 inches (12.7 cm), and the total escape opening area must be at least 36.0 in^2 (232.3 cm^2). The Gulf fisheye must be installed in the codend of the trawl to create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 12.5 ft (3.81 m) and no less than 8.5 ft (2.59 m) from the codend tie-off rings. The Gulf fisheye may not be offset more than 15 meshes perpendicular to the top center of the codend.

E. *Jones-Davis.*

1. *Description.* The Jones-Davis BRD is similar to the expanded mesh and the extended funnel BRDs except that the fish escape openings are windows cut around the funnel rather than large-mesh sections. In addition, a webbing cone fish deflector is installed behind the funnel.

2. *Minimum Construction and Installation Requirements.* The Jones-Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single piece of 1 5/8–inch (3.5–cm) stretch mesh number 30 nylon 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42–mesh side together.

(b) *28–inch (71.1–cm) cable hoop.* A single hoop must be constructed of ½-inch (1.3–cm) steel cable 88 inches (223.5 cm) in length. The cable must be joined at its ends by a 3–inch (7.6–cm) piece of ½-inch (1.3–cm) aluminum pipe and pressed with a 3/8–inch (0.95–cm) die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches (68.6 and 73.7 cm). The hoop must be attached to the extension webbing 17 ½ meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with 3/8–inch (0.95–cm) polypropylene or polyethylene rope for chaffing.

(c) *24–inch (61.0–cm) cable hoop.* A single hoop must be constructed of 3/8–inch (0.95–cm) steel cable 75 ½ inches (191.8 cm) in length. The cable must be joined at its ends by a 3–inch (7.6–cm) piece of 3/8–inch (0.95–cm) aluminum pipe and pressed together with a 1/4–inch (0.64–cm) die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches (58.4 and 63.4 cm). The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with 3/8–inch (0.95–cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel.* The funnel must be constructed from four sections of 1 ½-inch (3.8–cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29 ½ meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29 ½ meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23–mesh edge to form the funnel.

(e) *Attachment of the funnel in the webbing extension.* The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28–inch (71.1–cm) cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28–inch (71.1–cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position.

(f) *Cutting the escape openings.* The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(g) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1 5/8–inch (4.13–cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10–14 inches (25.4–35.6 cm) of the posterior edge of the funnel.

(h) *11–inch (27.9–cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16–inch (0.79–cm)or 3/8–inch (0.95–cm) cable 34 ½ inches (87.6 cm) in length. The ends must be joined by a 3–inch (7.6–cm) piece of 3/8–inch (0.95–cm) aluminum pipe pressed together with a 1/4–inch (0.64–cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(i) *Installation of the cone in the extension.* The cone must be installed in the extension 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine 4 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine must be attached to the 28–inch (71.1–cm) cable hoop at the center of each of its sides; the points of attachment for the two pieces of twine must be measured 20 inches (50.8 cm) from the midpoint attachment. Two 8–inch (20.3–cm) pieces of number 60 twine must be attached to the top and bottom of the 11–inch (27.9–cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24–inch (61–cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11–inch (27.9–cm) cone hoop.

[FR Doc. 98–13283 Filed 5–4–98; 3:51 pm]

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Proposed Rules

Federal Register
Vol. 63, No. 96
Tuesday, May 19, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

7 CFR Part 59

[Docket No. 96–035A]

RIN 0583–AB

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 100

[Docket No. 97N–0322]

RIN 0583–AC52

Salmonella Enteritidis in Eggs

AGENCIES: Food Safety and Inspection Service, USDA; Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: Eggs contaminated with *Salmonella* Enteritidis (SE) are associated with significant numbers of human illnesses and continue to be a public health concern. SE infected flocks have become prevalent throughout the country, and large numbers of illnesses have been attributed to consumption of mishandled SE-contaminated eggs. As a result, there have been requests for Federal action to improve egg safety. The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) share Federal regulatory responsibility for egg safety. However, regulation of shell eggs is primarily the responsibility of FDA. Through joint issuance of this notice, FSIS and FDA are seeking to identify farm-to-table actions that will decrease the food safety risks associated with shell eggs. The agencies want to explore all reasonable alternatives and gather data on the public benefits and the public costs of various regulatory approaches before proposing a farm-to-table food safety system for shell eggs. Interested persons are requested to comment on the alternatives discussed in this advance notice of proposed rulemaking (ANPR), suggest other possible approaches, and provide information that will help the agencies weigh the merits of all alternatives. In addition to the actions contemplated in this ANPR, both agencies are planning to take actions that address adoption of refrigeration and labeling requirements that are designed to reduce the risk of foodborne illness.

DATES: Comments must be received on or before August 17, 1998.

ADDRESSES: Send an original and two copies of comments to: FSIS Docket Clerk, Docket No. 96–035A, Room 102 Cotton Annex Building, 300 12th St, SW., Washington, DC 20250–3700. Reference material cited in this document and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1:00 p.m. and 2:00 p.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Stafko, Food Safety and Inspection Service, USDA, Washington, DC, 20250, (202) 720–7774, or Dr. Marilyn Balmer, Center for Food Safety and Applied Nutrition, Food and Drug Administration, HHS, Washington, DC 20204, (202) 205–4400.

SUPPLEMENTARY INFORMATION:

Table of Contents

Background

This section provides information on the egg industry, data that associate eggs with an epidemic of cases of human salmonellosis caused by *Salmonella* Enteritidis, and past efforts and current plans to alleviate this public health problem.

1. Egg Production and Marketing

Eggs are a nutrient-dense food that play an important part in most Americans' diets, either alone or as a constituent of another food. On a per capita basis, Americans consume about 234 eggs a year. The National Agriculture Statistics Service (NASS) of the Department of Agriculture (USDA) estimates the total value of the table eggs (eggs produced for human consumption, not hatching) produced in the U.S. in 1995 at $3.96 billion.

The egg industry is fairly stable in terms of overall production. U.S. production has increased only slightly in absolute terms in recent years, from about 60 billion eggs in 1984 to about 63 billion in 1995. About 70 percent are sold as whole ''shell'' eggs. The remaining 30 percent are processed into liquid, frozen or dried pasteurized egg products, the majority of which are destined for institutional use or further processing into other foods such as cake mixes, pasta, ice cream, mayonnaise, and bakery goods.

International trade is a small but growing part of the U.S. egg market. The U.S. does not import a significant quantity of shell eggs and imports only 0.2 percent of processed egg products. Exports now amount to more than 2 percent of the total U.S. production. In 1996, exports of eggs and egg products reached a market value of nearly $20 million.

There are essentially three kinds of flocks associated with egg production: breeder flocks, multiplier flocks, and laying flocks (including both immature pullets and mature laying hens). There are roughly 300,000 breeding hens (grandparents), 3 million multipliers (parents), and 300 million laying hens. NASS estimates the value of the laying flocks alone to be close to $1 billion.

Geographically, commercial egg production in the western United States is concentrated in California, and in the east it is centered in Ohio, Indiana, and Pennsylvania. According to NASS, which surveys the number of egg laying flocks of 30,000 or more hens, California and Ohio each have about 25 million layers, and Indiana and Pennsylvania each have about 20 million. Other states in which major producers are located

include Iowa, Texas, Minnesota, and Georgia. Twenty-one other states are reported as having fewer than 10 million, but more than 2 million, layers in production.

Egg production is being concentrated in fewer, larger firms. Federal Regulations require commercial flocks of more than 3,000 hens to be registered with USDA. USDA's Agricultural Marketing Service (AMS) currently has 757 such egg producers registered. The United Egg Producers (UEP), a cooperative that provides a variety of services to member egg producers, reports that the number of major producers (those with flocks of 75,000 or more, which produce about 94 percent of America's table eggs) declined in just 3 years from 380 producers in 1994 to 329 producers in 1996.

Modern egg production facilities are increasingly large, ''in-line'' facilities. They integrate laying, packing, and even processing of egg products at one location. Freshly laid eggs go directly into a processing system where they are cleaned, sorted, and packed for distribution.

A significant portion of production, however, is still ''off-line.'' Off-line operations are those that are not integrated with laying facilities, but rather have eggs shipped from laying facilities at other locations. The fresh eggs are collected and shipped from the laying facilities periodically, usually once a day but sometimes less often. These eggs are frequently placed in coolers at the laying facility before shipment to a facility where they are processed and packed.

Most packers either own or have contractual relationships with their suppliers. Their laying hens are bred and cared for to ensure the largest possible numbers of consistent quality eggs, and are housed together in large hen houses.

Although shell egg cleaning and packing is configured differently in different plants, after collection the eggs generally are (1) washed, (2) rinsed and sanitized, (3) dried, (4) candled, sorted, and graded, (5) packed in cartons and crates onto shipping pallets, and (6) placed in a cooler pending shipment. Eggs that are found to be cracked or otherwise unsuitable for sale as whole shell eggs are by law ''restricted.'' USDA allows a certain percentage of some classes of restricted eggs to be moved in commerce. If restricted eggs sent to a federally inspected facility (often referred to as a ''breaker plant'') are determined acceptable, they are broken, inspected for wholesomeness, pooled, and then processed into a pasteurized liquid, frozen, or dried egg product.

After packing, shell eggs usually are loaded into refrigerated transports for shipment to market. Some producers use their own trucks, while others contract with trucking firms to deliver eggs to their customers. Some are delivered directly to retail outlets, and others are delivered to warehouses and other intermediate distribution points before going to the retail store or food service facility where they reach the consumer.

2. Salmonella and the Salmonellosis Epidemic

Salmonella is a gram-negative, motile, rod-shaped bacteria that can grow under both aerobic and anaerobic conditions. *Salmonella* has evolved into a successful human pathogen because of its survival characteristics and virulence. The organisms are ubiquitous, and are commonly found in the digestive tracts of animals, especially birds and reptiles. Human illnesses are usually associated with ingestion of food or drink contaminated with *Salmonella,* but infection may also be acquired from an infected person by the fecal-oral route through poor personal hygiene, or from pets.

More than 2,300 different serotypes have been identified and are associated with a variety of animal reservoirs, geographic locations, and frequencies. However, microbiologists are finding that atypical biotypes have emerged that are difficult to identify and detect by conventional means, placing more value on new molecular methods and other technologies for identifying them.[1]

Epidemiologically, salmonellae can be grouped as follows:

1. *Those that infect mainly humans.* These include human pathogens such as *S.* Typhi and *S.* Paratyphi (A and C) which cause typhoid (enteric) and paratyphoid fevers, respectively, the most severe of the *Salmonella* disease*S. S.* Typhi may be found in blood, as well as in stool and urine before enteric fever develops. Typhoid fever has a high mortality rate; the paratyphoid syndrome is generally milder. These diseases are spread through food and water contaminated by feces and urine of patients and carriers.[2]

2. *Those that infect mainly animals.* These include animal pathogens such as *S.* Gallinarum (poultry), *S.* Dublin (cattle), *S.* Abortus-ovis (sheep), and *S.* Choleraesuis (swine). Some of the organisms in this group are also human pathogens and can be contracted through foods.

In general, salmonellae are quite resilient and able to adapt to extremes in environmental conditions. They are resistant to freezing and drying. They are able to grow within a wide temperature range; from extremes as low as 2–4°C (36–39°F), and as high as 54°C (129°F). They have been reported to grow within a pH range of 4.5 to 9.5. Salmonellae do not grow in foods with a water activity of 0.93 or less, and are inhibited by the presence of salt at levels between 3 and 4 percent. Preconditioning to thermal and acid stress has been shown to allow strains to adapt to greater extremes.[3] These properties make many food products more likely to support the growth of these organisms, such as many refrigerated products, fermented foods, and cheeses.

The human infectious dose is highly variable, depending largely on the strain, the food, and the susceptibility of the human host. Recent evidence suggests that as few as one to ten *Salmonella* cells can cause infection in humans. Human diarrheagenic response and enterocolitis result from the migration of the pathogen from the mouth at ingestion to the intestinal tract and mesenteric lymph nodes, and the coinciding production of bacterial enterotoxin. *Salmonella* also produce a cytotoxin that inhibits protein synthesis and causes lysis of host cells, helping the organisms to spread to other tissues.[4]

The Centers for Disease Control and Prevention (CDC), which has classified salmonellosis as a reportable disease since 1943, has found it to be one of the most commonly reported bacterial infections of any kind in the United States. Human salmonellosis is the second most prevalent foodborne disease in the U.S. after illnesses from *Campylobacter* (a generally milder illness associated with raw and undercooked poultry, raw milk, and untreated water as well as improper handling and preparation of food). In 1996, 39,027 confirmed cases of human salmonellosis were reported to CDC by State and local departments of health. Although this number of cases is below the peak year of 1985, when 57,896 cases were reported, the number of cases is significant. From 1985 through 1996, there have been 508,673 reported cases of salmonellosis.[5]

Salmonella usually cause an intestinal infection accompanied by diarrhea, fever, and abdominal cramps starting 6 to 72 hours after consuming a contaminated food or drink. The illness is usually 4 to 7 days in duration, and most people recover without antibiotic treatment. About 2 percent of affected persons may later develop recurring joint pains and arthritis.[6] In

the very young, the elderly, and persons with compromised immune systems, the infection can spread to the bloodstream, and then to other areas of the body such as the bone marrow or the meningeal linings of the brain, leading to a severe and occasionally fatal illness unless treated promptly with antibiotics.[7]

Because many cases are not reported, these cases may represent only a small fraction of the actual number of illnesses that occur. Not all infected persons develop symptoms severe enough that they seek medical attention, and physicians may not have patients' stool analyzed. It is estimated that there are an additional 20 to 100 cases of salmonellosis for every reported case, or some 800,000 to 4 million actual cases each year in the U.S.[8]

The cost to Americans is considerable. The patient-related costs of salmonellosis from medical expenses and loss of income were estimated in 1988 to be about $1,560 per reported case and about $250 for each unreported case.[9] By applying the cost per reported case to the 41,222 cases and probable illnesses reported in 1995, the cost of salmonellosis in 1995 can be estimated to be between $350 million and $1.5 billion.

CDC's surveillance data on isolates reported by State and territorial epidemiologists list close to 600 different serotypes that have caused human illness in the U.S. Based primarily on outbreak data, where Federal, State, and local epidemiologists have sought to identify the source of infection, some serotypes are linked to particular food vehicles. The three illness-causing serotypes most frequently reported—*S.*Typhimurium, *S.* Heidelberg, and *S.* Enteritidis—are most often traced to poultry or eggs when a food vehicle is found.

Salmonella Enteritidis emerged in epidemic proportions in the United States about a decade ago in the northeast. Over the last 20 years, SE-associated illnesses have increased greatly in number. The proportion of reported *Salmonella* isolates that were SE increased from 5 percent in 1976 to 26 percent in 1994.[10] SE was the most frequently reported *Salmonella* serotype in 1994, 1995, and 1996.

CDC surveillance data show that the rates of isolation of SE increased in the U.S. during 1976–1994 from 0.5 to 3.9 per 100,000 population, and that illnesses are occurring throughout the U.S. While the trends for the years 1990–1994 show a decrease in the SE isolation rate in the northeast from 8.9 to 7.0 per 100,000 population, the rate increased approximately threefold for the Pacific region, particularly for southern California, which had rates as high as 14 per 100,000.[11]

From 1985 through 1996, there have been 660 SE outbreaks reported to CDC. Associated with these outbreaks, there have been 77 reported deaths, 2,508 reported hospitalizations, and 25,935 reported cases of illness. The peak year for outbreaks was 1989 with 77 reported. Deaths have occurred in all years. In 1995 and 1996, there were 57 and 51 reported outbreaks respectively with 8 deaths in 1995 and 2 deaths in 1996. The majority of the outbreaks occur in the commercial venue with the implicated food containing undercooked eggs.

There is evidence that this increase in SE infections is global. World Health Organization data show increases in SE on several continents, including North America, South America, Europe, and perhaps Africa.[12] The trend towards centralized large-scale food processing with wide distribution means that when contamination occurs, it can affect large numbers of people over a large area. Although most eggs are consumed individually, large numbers are sometimes pooled during the production or preparation of some foods. This increases the likelihood of SE being in the raw product. This potential was illustrated by a major 1994 SE outbreak attributed to ice cream. FDA reported the most likely cause was contamination of the pasteurized ice cream mix by hauling it in a tanker improperly cleaned after carrying a load of unpasteurized liquid eggs. The ice cream mix was not heat treated after receipt from the contaminated tanker, and the ice cream was distributed widely.[13]

In 1995 surveys, SE phage-type 13A was found to be the predominant phage-type in egg laying flocks in the United States, followed by phage-type 8 and, increasingly, phage-type 4. This represents a significant change since 1991, when phage-type 8 was predominant and phage-type 4 was undetected in laying flocks.[14]

3. Salmonella in Eggs; the Risk

a. Contamination Through the Shell; Current Egg Cleaning Practices

Eggs have long been valued for their natural protective packaging. Having evolved to protect the developing embryonic bird inside, the egg provides an inhospitable environment for *Salmonella* as well as other bacterial contaminants. A fresh egg is fairly resistant to invasive bacteria, a fact relied upon in many countries where shell eggs are not refrigerated. The egg's defenses are both mechanical and chemical.

Mechanically, there are essentially four layers of protection preventing bacteria from reaching the nutrient rich yolk: (1) the shell, (2) the two membranes (inner and outer) between the shell and the albumen, (3) the albumen (eggwhite), and (4) the vitelline (yolk) membrane which holds the yolk.

When laid, the egg shell is covered on the outside by the cuticle, a substance similar in composition to the shell membranes. When the cuticle dries, it seals the pores and hinders initial bacterial penetration. However, the cuticle usually is removed along with debris on the surface of the shell during the cleaning process. Some processors add a thin coating of edible oil or wax to eggs after they are washed and dried to close the shell pores in a manner similar to the cuticle.

The shell, although porous and easily penetrated by bacteria, protects the outer membrane from physical abuse. The dry and much less porous outer shell membrane is much more difficult for bacteria to penetrate. The inner shell membrane and the yolk membrane also present barriers. Perhaps the most substantial line of defense against bacteria is provided by the egg albumen.

In fresh eggs, the albumen has a high viscosity, which both anchors the yolk protectively in the center of the shell and prevents movement of bacteria toward the yolk. (Eggs are stored with the blunt end up to help keep the yolk, which has a lower specific gravity, from drifting toward the inner membrane.) In addition, the albumen has chemical properties that inhibit bacterial growth.

Originally, the potential for *Salmonella* to contaminate shell eggs was primarily a matter of the organisms passing through the shell into the egg's contents because of, mostly, environmental conditions. With salmonellae other than SE, this still is the most likely means of potential contamination of intact shell eggs.[15]

It has long been known that the laying environment can contribute to egg shell contamination. The surface of the egg can become contaminated with virtually any microorganism that is excreted by the birds. Many serotypes of *Salmonella* as well as other bacteria have been isolated from laying flocks. Contact with feces, nesting material, dust, feedstuffs, shipping and storage containers, human beings, and other creatures all contribute to the likelihood of shell contamination. Penetration into the egg contents by both salmonella and spoilage bacteria increases with duration of contact with contaminated material, especially during storage at

high temperatures and high relative humidities. Therefore, eggs should be collected as frequently as possible, and kept as clean and cool as possible (short of freezing, which can damage the shell).

Other sources of shell contamination are always present in the production environment. Producers should clean and sanitize equipment and facilities as necessary to prevent egg contamination, and not rely simply on egg washing to remove contaminants after the fact. One recent study found high levels of *Salmonella* isolates from egg belts, egg collectors, and ventilation fans (64–100 percent of samples on different farms) as compared to isolates from egg shells before collection (8 percent overall).

Cleaning the exteriors of shell eggs to remove fecal material and other debris reduces the risk that pathogenic bacteria will have an opportunity to penetrate the egg shell. The cleaning process provides consumers with clean egg surfaces not likely to promote contamination of the egg by penetration of bacteria through the intact shell or by cross contamination upon cracking open the egg for use.

Most modern egg washing machines are spray-washers. The typical continuous egg washer consists of three stages: a wash chamber where the eggs are washed with warm water and detergent using moving brushes or high pressure jets, a rinse chamber which usually includes a sanitizing agent, and a drying chamber.

If not done properly, washing can contribute to microbial contamination of the egg's contents and may contribute to increased spoilage rates. Organisms have the potential to concentrate in the recirculating wash water, and the liquid can be aspirated into the egg through the shell under certain conditions. In particular, when wash water outside the egg shell is colder than the eggs' contents, as the eggs' contents cool it creates low pressure on the inside of the egg shell that draws liquid outside the shell into the egg through the shell's pores. This observation led to the USDA egg grading requirement that wash water be at least 20° F warmer than the eggs being washed. Typically, U.S. processors use a hot wash water (110–120° F) to ensure temperatures hostile to most organisms that may collect in the wash water as well as to ensure that the 20° F egg-wash water temperature difference is maintained even when cleaning quite warm eggs, which are common in in-line facilities. However, the use of hot water damages or removes the cuticle, which if left intact, helps prevent bacterial contamination.

After washing, the eggs should be quickly and completely dried to reduce the risk that any bacteria remaining on the surface of the eggs are aspirated into the eggs as they cool to ambient temperature. They must be handled carefully thereafter to avoid recontamination.

b. Transovarian Contamination of Egg Contents With SE

The increase in SE outbreaks associated with shell eggs in the 1970's and 1980's raised suspicions of transovarian contamination.[16] This mode of contamination was confirmed by an experiment in which laying hens were infected with SE and found to produce eggs contaminated with the same strain of SE.[17] The site of infection is usually the albumen near the yolk membrane.

Based on USDA data, it can be estimated that such transovarian SE contamination occurs in about 1 out of every 10,000 eggs produced in the U.S. This prevalence is based on a model applying data on the frequency of SE positive eggs from infected flocks to an estimation of the number of infected flocks in the U.S. The frequency of infected eggs in an infected flock can be determined from USDA tests of eggs produced by SE-positive flocks. The number of positive flocks is based on USDA's nationwide survey in 1995 of SE in spent hens at slaughter and unpasteurized liquid eggs at breaker plants. Application of the model resulted in a distribution of prevalences ranging from 0.2 to 2.1 positive eggs per 10,000 with a mean of 0.9 positive eggs per 10,000.[18] The problem is nationwide, although there are some regional differences.[19]

Although a prevalence of 1 in 10,000 seems low, it is significant in terms of exposure. That frequency amounts to about 4.5 million SE-contaminated eggs annually in the U.S., exposing a large number of people to SE.

Salmonellosis outbreaks commonly occur when mishandling permits the SE organisms to multiply and inadequate cooking or mishandling during preparation or service results in live pathogens being ingested with the food. However, the dose required to make a person ill may vary with the individual. The biggest factor in determining whether illness occurs, and how severe it may be, appears to be the age and health of the person ingesting the organisms.

4. Mitigating the Risk; Current Efforts

Mitigation of risks associated with SE in eggs requires analysis of everything in the food production-distribution-consumption continuum from the farm to table that might affect the likelihood that consumers will become ill from SE in eggs.

a. Production: Preventing Introduction of SE Into Laying Flocks and From Hens to Eggs

The Federal government has devoted significant efforts to investigating and controlling SE in laying hens. Between 1990 and 1995, USDA's Animal Plant Health Inspection Service (APHIS) conducted an SE control program (9 CFR Parts 71 and 82; 56 FR 3730; January 30, 1991). Under that program, APHIS restricted the movement of eggs from flocks that tested positive for SE. In cooperation with FDA, CDC, and State authorities, eggs implicated in SE outbreaks were traced back to their farms of origin. If initial tests of manure and egg transport machinery indicated the presence of SE, the flock became a ''test flock.'' Blood and internal organ testing was done on the test flocks, and if any were found positive, the flock was designated ''infected.'' The eggs from test and infected flocks could not be sold as table eggs but could be sent to processors for pasteurization, hard boiling, or export. A flock's status as a ''test'' or ''infected'' flock was not lifted until extensive testing, including additional tests of internal organs of birds, detected no SE. Establishments had to clean and disinfect the hen houses before installing replacement flocks.

In 1995, shortly after transfer of the program from APHIS to FSIS, funding for the entire program was removed from the USDA's 1996 appropriations. FDA, which had worked closely with APHIS on its tracebacks, assumed responsibility for all aspects of investigating outbreaks, tracing back egg-associated SE illnesses to particular producers/flocks, diverting eggs, collecting flock data to help track the spread of SE, encouraging better quality control measures by producers, and adoption by States of egg quality assurance programs. State and county health departments usually perform the epidemiological investigations of outbreaks.

The APHIS-sponsored National Poultry Improvement Plan (NPIP), a cooperative Federal-State program, provides assistance to breeders and hatchers on keeping birds free of egg-transmitted diseases. In 1989, an SE control program was developed to reduce the prevalence of SE organisms in hatching eggs and chicks. Participants in the program follow sanitation and other control procedures at breeder farms and hatcheries. Forty-

six SE-positive isolates have been found since its inception, with a decline evident in recent years. Only two were found in 1995, and one in 1996.[20]

A third APHIS program resulted in a variety of voluntary flock control programs that appear to have had some effect in reducing the numbers of infected flocks. In 1992, in the wake of APHIS tracebacks implicating flocks in Pennsylvania, APHIS cooperated with industry representatives, State government officials, and academic experts to develop a program to reduce the prevalence of SE in laying hens. In the *Salmonella* Enteritidis Pilot Program (SEPP), flock owners purchased chicks from hatcheries participating in the NPIP program, imposed strict rodent control measures, cleaned and disinfected hen houses between flocks, controlled feed, and implemented other biosecurity measures. The program relied on APHIS testing of environmental samples to determine positive flocks, and egg testing by commercial laboratories when environmental samples were positive.

In recent years, several other voluntary programs for controlling SE in shell eggs have been developed. California's Egg Quality Assurance Plan calls for producers and processors to apply current good manufacturing practices and to implement risk reduction measures for all hazards throughout the production and processing environments. The New England Risk Reduction Program for SE in eggs is being adopted by producers in Maine and other northeast States. United Egg Producers has developed a ''Five Star'' program for its members, which requires participants to ensure (1) poultry house cleaning and disinfecting, (2) rodent and pest elimination, (3) proper egg washing, (4) biosecurity measures, and (5) egg refrigeration during transport and storage. UEP has recently added testing provisions for verification. The U. S. Animal Health Association, a professional association of veterinarians, developed ''Recommended Best Management Practices for a SE Reduction Program for Egg Producers,'' guidelines intended for use by producers without a State or industry program. Other States are working on egg quality programs, and an increasing proportion of producers seem to be adopting SE-control programs.

Much remains unknown about how SE infects flocks, and how the organism contaminates eggs. USDA scientists believe that among birds in an SE-infected flock, only a small number are shedding SE organisms at any given time, and that an infected bird might easily lay many normal, uncontaminated eggs, only occasionally laying an egg contaminated with SE. There is speculation that the likelihood of infection or the laying of contaminated eggs also may be related to factors other than environmental conditions, such as the genetics of the birds, the age of the birds, the site of infection in the hen, and whether the birds have been stressed (e.g., because of molting).[21] At this time, it may not be possible to design an SE control program that will remove all possibility of egg-laying chickens producing SE contaminated eggs. The agencies seek comments on this issue.

b. Processing and Distribution: Preventing Growth of SE in Eggs

In addition to the presence of SE in shell eggs, many other factors may influence the number and severity of salmonellosis cases. Key factors are pathogenicity and virulence of the organism, the dose level, and the numbers and susceptibility of the people exposed. In general, the greater the dose, the greater the chance that the person ingesting it will become ill.

The likelihood of SE multiplying depends primarily on the variables of time and temperature, although other factors such as the site of the egg contamination and the presence in the albumen of free iron also appear to play a role.[22] The site of contamination normally is the albumen. Over time, beginning after the egg is laid, the albumen proteins break down, ultimately rendering the albumen watery and less viscous and reducing the mechanical as well as the chemical defenses against bacterial motility and growth. At the same time, the yolk membrane degrades and becomes more porous. This degradation of the albumen and yolk membrane permits bacteria to reach the nutrient-rich yolk and multiply. The rate at which this degradation takes place relates to the temperature of the egg, with degradation delayed at cold temperatures and occurring more rapidly at warm temperatures.[23]

Studies of the growth of SE adjacent to the yolk indicate that there are three distinct phases in the growth curve of SE in eggs. The first phase takes place in the first 24 hours after lay, when the pH of the albumen rises from about 7 to about 9 and, it is suggested, the bacterium have enough iron reserves of their own to support about four generations. Studies suggest the numbers of salmonellae can increase about 10-fold during that initial phase, before entering a lag phase during which numbers remain fairly constant. The length of that lag phase is largely temperature-dependent, and its end, the beginning of the third phase, is signaled by penetration of the yolk membrane by the bacteria and resumption of rapid growth.[24]

Failure to cool eggs clearly contributes to SE multiplication. One study found that SE in eggs artificially inoculated in the albumen and stored at 20 °C (68 °F) grew rapidly after they had been stored for approximately 3 weeks, but that rapid growth occurred within 7 to 10 days when storage temperatures fluctuated between 18 °C (64 °F) and 30 °C(86 °F).[25] A different study of eggs with SE inoculated under the shell membrane found that after only 48 hours at 26 °C (78.8 °F) yolks contained high levels of SE.[26] Although there is consensus on the advisability of keeping eggs cool to prevent SE growth, there is debate on precisely what temperature is required. Because the studies referenced above rely on inoculated eggs, they may not accurately represent naturally occurring strains or the numbers of organisms that occur and grow in eggs under similar conditions. The conclusions suggest that internal egg temperatures of 7 °C (approx. 45 °F) or lower are unlikely to promote SE growth should SE be present in the egg.

Although the studies suggest that there is a delay of at least several days before the egg's natural defenses start breaking down, they also suggest that the rate at which degradation occurs is temperature related, and that eggs should be chilled as soon as possible.[27] The sooner an egg is chilled, the longer its defenses will be retained and the less likely that any SE present will have an opportunity to replicate.

The time it takes for an egg's contents to reach a temperature of 45 °F is affected by many things, including the temperature of the egg when received at the packing plant, heat added during processing, temperature when packed, insulation effect of the packaging, how packed eggs are stacked in coolers during storage and transportation, and the ambient air temperature and air circulation provided at all points after packing.

Egg processing procedures in the U.S. typically result in eggs being warmed. Warming begins as the eggs are loaded onto the conveyance system, and increases as they are washed; surface temperatures of eggs immediately after washing will approach that of the wash water, which is normally about 43–40 °C or 110–120 °F.[28] As noted, hot wash water temperatures are intended to provide adequate cleaning of the shell surface and an adequate temperature differential between the wash water and

the egg. USDA studies have shown that water temperatures colder than the internal egg temperatures cause the eggs' contents to cool leading to a pressure gradient that pulls in water and any bacteria in the water through the shell.[29]

After the eggs emerge from the wash and are dried with forced ambient air, internal temperature at the time they are packed is often in the 70–80 °F range. After packing, most processors hold eggs in coolers at an ambient air temperature of 45–55 °F, and transport eggs at an ambient air temperature of 60 °F or less. However, the ambient air temperature does not correlate to egg temperature. The temperature of the eggs' contents at the time they are transported from the packer will range between 50 °F and 80 °F, depending on the starting temperature, the packaging, how the crates are packed and stacked, and the length of time they are in the cooler before shipping.

The rate at which eggs chill after leaving the processor is similarly dependent on the initial temperature, packaging, loading configurations, and the capability of the refrigeration equipment. Transporters contend that their refrigeration units are designed to maintain—not reduce—temperatures, and that they cannot be relied upon to reduce the temperatures of products being transported. Further, the driver of a truck making multiple deliveries must open the truck door frequently, and if the outside temperature is warm, it would be virtually impossible to maintain the ambient air temperature uniformly throughout the load. Similarly, most retail stores' display cases have been designed to keep products cool, not to cool down products. Eggs received by retail stores are frequently at temperatures well above 45 °F.

Ideally, reliance on the use of ambient air temperature of 45 °F during distribution and retail as a reasonable measure of whether the eggs are being maintained under appropriate conditions would necessitate the eggs being chilled to an internal temperature of 45 °F before they are shipped. Significantly, there are a number of actions processors may take to reduce the temperature at which eggs are packed, and to cool them before shipment, including lowering the wash temperatures and pre-pack chilling of eggs. Recent research has shown that new technologies are available to processors to rapidly cool shell eggs. One study found that carbon dioxide, as a cryogenic gas, can be used instead of air chilling to rapidly chill eggs and results in no increase in cracked shells.

c. Rewashing/Repackaging: Preventing Growth of SE in Eggs

It appears that eggs are occasionally removed from retail establishments when they are within a few days of the expiration or sell-by date stamped on the carton and returned to the processing plant. These eggs are co-mingled with eggs that are being cleaned for the first time, go through the hot water/sanitizing process again, and are graded. The rewashed eggs are then packed into cartons and are redistributed for sale. These eggs receive a new expiration or sell-by date.

On April 17, 1998, USDA announced that as of April 27, 1998, repackaging of eggs packed under its voluntary grading program will be prohibited while the Department reviews its policies on egg repackaging and engages in any necessary rulemaking. The prohibition on repackaging affects eggs packed in cartons that bear the USDA grade shield. About one-third of all shell eggs sold to consumers are graded by USDA.

In the wake of the USDA action, FDA is considering appropriate measures to take to address this issue. FDA requests comments on how widespread this practice is and on whether any aspect of rewashing/repackaging of eggs significantly increases the risk that consumers will contract SE-related illness from these eggs. FDA notes, for example, that repackaged eggs are subjected to warming during rewashing. Inasmuch as an egg's natural barriers to the multiplication of SE may be compromised at temperatures above 45 °F (see discussion in section 4b), does the warming of shell eggs during rewash significantly increase the risk that SE (if present) will multiply in rewashed/repackaged eggs during distribution or while held for sale, service, or preparation? Does it significantly increase the risk of illness for the consumer if the egg is not thoroughly cooked before consumption?

Are there important aspects, for example, safety risks or otherwise, of rewashed/repackaged eggs that would raise the question whether rewashed/repackaged eggs should be labeled in the same manner as other shell eggs? Are rewashed/repackaged eggs different enough from other shell eggs such that label statements in addition to ''expiration'' or ''sell-by'' dates would be necessary to adequately describe the product? If, for some segments of the U.S. population, the standard egg labeling practices are not appropriate for rewashed/repackaged eggs, how should these eggs be labeled to enable consumers to understand the nature of this product and to communicate other important information to the purchaser?

The issue of rewashing and repackaging of eggs also calls attention to current practices regarding the expiration dating of eggs in establishments that function primarily under State regulatory oversight. While a few States have regulations governing expiration dating of eggs, most do not and egg packers determine what expiration dating practices they will employ. Processors that do not use USDA's grading service, and that are not covered by State requirements, typically choose to place a 30- or 45-day expiration date on egg cartons. Some processors do not provide any expiration date. Section 403(a) of the Federal Food, Drug, and Cosmetic Act (FFDCA) states that a food is misbranded if its labeling is false or misleading in any particular. FDA requests comments on the latter two practices described above could violate 403(a) or other provisions of the Act. It also seeks comments on whether the variety of expiration dating practices for eggs could be misleading to consumers given their expectations when they purchase eggs. FDA will evaluate comments received regarding expiration dating and will consider providing guidance to the States on appropriate controls. FDA also requests comments on whether any such guidance should address appropriate practices for use of eggs that are not sold by the expiration date.

d. Preparation and Consumption: Preventing Ingestion of SE from Eggs

Another risk factor is exposure—the number of people who ingest SE organisms from SE-contaminated eggs. Pathogens like SE usually become a public health problem as a consequence of changes in the agent itself, the host, or the environment. Examples of such changes include the types of food people eat, the sources of those foods, and the possible decline in public awareness of safe food preparation. Antibiotic-resistant strains of pathogens are emerging, and people are exposed to new pathogens originating in other regions and other parts of the world. People today have increased life expectancies, and there are increasing numbers of immuno-compromised persons, increasing the population susceptible to severe illness after infection with foodborne pathogens.[30]

Finally, preparation and consumption patterns can greatly influence the likelihood of foodborne illness from eggs. However, SE outbreaks of foodborne illness from eggs continue to be associated with the use of recipes

calling for uncooked eggs or with undercooking of eggs. Low numbers of SE organisms in prepared foods can increase if the foods are held at room temperature or are cross contaminated with other foods. The risk is further amplified in commercial or institutional food service settings where larger quantities of food are served to larger groups of persons over extended periods of time.

As the proportion of food that is eaten outside homes in the U.S. increases, outbreaks associated with these foods increase in importance. They accounted for more than 90 percent of reported foodborne disease outbreaks in the 1990s.

5. Current Regulation of Shell Eggs

Federal authority to regulate eggs for safety is shared by FDA and USDA. FDA has jurisdiction over the safety of foods generally, including shell eggs, under the FFDCA (21 U.S.C. 301, *et seq.*). FDA also has authority to prevent the spread of communicable diseases under the Public Health Service Act (PHSA)(42 U.S.C. 201, *et seq.*). This authority would include the authority to regulate foods when the foods may act as a vector of disease, as is the case with eggs and SE. USDA has primary responsibility for implementing the Egg Products Inspection Act (EPIA)(21 U.S.C. 1031, *et seq.*), although FDA shares authority under the statute (see, for example, 21 U.S.C. 1034). USDA's Food Safety and Inspection Service and Agricultural Marketing Service share responsibilities under the EPIA. FSIS has primary responsibility for the inspection of processed egg products to prevent the distribution into commerce of adulterated or misbranded egg products (7 CFR 2.53), while AMS conducts a surveillance program to ensure proper disposition of restricted shell eggs.

Under Federal regulations, all major commercial egg producers—the 757 producers who have more than 3,000 laying hens and collectively are responsible for close to 94 percent of the nation's eggs—are required to register with AMS. They are subject to periodic on-site visits by AMS to ensure that eggs packed for commercial sale have no more than the percentage of restricted eggs allowed for the grade of eggs being packed, that they are properly labeled, and that proper disposition is made of inedible and restricted eggs. Exempted from this oversight are approximately 80,000 small egg producers.

States may have their own laws governing eggs, as long as they are consistent with Federal laws (e.g., 21 U.S.C. 1052(b)(2)). Generally, State laws and regulations specifically govern egg grading and labeling in each of the States. These laws influence how eggs are packed and shipped for sale and then handled by retail stores, restaurants, and other food service establishments in those jurisdictions.

FDA and FSIS work with the States to encourage uniformity among the State laws affecting food safety in retail and food service establishments. The principal mechanism for this is the *Food Code*, a model code published by FDA intended for adoption by State and local authorities for governing retail food and food service establishments. The provisions of the *Food Code* are modified periodically with input from a broad spectrum of organizations—industry, academia, consumers and government agencies at the Federal, State, and local levels. In addition, training programs on the *Food Code* recommendations have been conducted yearly with State agencies.

The *Food Code* states that ''potentially hazardous foods,'' including shell eggs, should be received and maintained at a temperature of 41 °F or less, or, if permitted by other law to be received at more than 41 °F, be reduced to that temperature within 4 hours. Because eggs are often received at temperatures well above 41 °F, the 1997 edition of the *Food Code* contains an exception for shell eggs, requiring only that they be placed upon receipt in refrigerated equipment that is capable of maintaining food at 41 °F.

The *Food Code* specifies that shell eggs, when prepared for service, are to be cooked to specified temperatures for a specified time. If the egg is not served immediately, hot and cold hold temperatures are specified. The *Food Code* further specifies that pasteurized eggs be substituted in delicatessen and menu items that typically contain raw eggs unless the consumer is informed of the increased risk. Pasteurized egg substitution is specified for eggs that are held before service of vulnerable individuals.

In recent years, many States have enacted laws requiring specified ambient air temperatures for shell egg storage and handling. While many States specify 45 °F or less for that purpose, others retain the 60 °F temperature requirement traditionally required under the USDA grading standards, and some have no requirement. A number of States have stated that they are waiting for USDA implementation of the EPIA shell egg refrigeration requirements before instituting any State law governing shell egg refrigeration.

The egg industry clearly has an interest in finding a way to constructively address the public concern about SE in eggs, and many in the industry have communicated their desire to work with the government toward an effective regulatory solution.

In November 1996, Rose Acre Farms, Inc., submitted a detailed petition (Docket No. 96P–0418) to the Federal agencies that have played a role in the regulation of shell eggs—FDA, FSIS, APHIS, and AMS—requesting that in regulating the presence of pathogens in shell eggs, the agencies ''adopt a comprehensive, coordinated regulatory program to replace the patchwork of approaches they currently take.'' The petitioner acknowledged the need to reduce the prevalence of SE in shell eggs, but advocated a broad-based regulatory program that goes beyond the traceback-and-sanction approach that, the petitioner contended, is both inadequate to protect consumers and unfairly burdens producers. The petitioner called for a collaborative process in developing incentives to encourage improved handling of eggs throughout the farm-to-table cycle and other modifications to promote greater levels of food safety.

In May of 1997, the Center for Science in the Public Interest submitted a petition (Docket No. 97P–0197) requesting that FDA issue regulations requiring that shell egg cartons bear a label cautioning consumers that eggs may contain harmful bacteria and that they should not eat raw or undercooked eggs. The petitioner further requested that all egg producers be required to implement on-farm HACCP programs to minimize the risk that their eggs will be contaminated with SE.

FDA and FSIS are responding to these petitions by initiating such a comprehensive, coordinated process with this ANPR.

Finally, USDA and FDA intend to encourage and assist in additional research on how hens become infected with SE, the factors that relate to infected hens' production of SE-contaminated eggs, better ways to identify specific strains of SE, the virulence and other characteristics of emerging SE strains, the extent of the potential public health risk from SE, and identification of effective controls and intervention strategies.

Because of the number of outbreaks of foodborne illness caused by *Salmonella* Enteritidis that are associated with the consumption of shell eggs, FDA and FSIS have tentatively determined that there are actions that can be taken even at this time to reduce the risk of foodborne illness from shell eggs while

additional measures are being considered pursuant to this ANPR. FSIS intends to act to amend its regulations to require that shell eggs packed for consumer use be stored and transported under refrigeration at an ambient temperature not to exceed 45 °F, and that these packed shell eggs be labeled to indicate that refrigeration is required. FDA intends to act to publish shortly a proposal to (1) require that retail food stores and food service establishments hold shell eggs under refrigeration and (2) require safe handling statements on the labeling of shell eggs that have not been treated to destroy *Salmonella* microorganisms that may be present.

6. Need for Additional Information and Analysis.

In 1991, the EPIA was amended in the wake of publicity about foodborne disease outbreaks attributed to *Salmonella* in shell eggs. The amendment requires, essentially, that shell eggs packed for consumers be stored and transported under refrigeration at an ambient air temperature not to exceed 45 °F. (21 U.S.C. §§ 1034, 1037). Congress also provided that these provisions would be effective only after promulgation of implementing regulations by USDA.

After reviewing the issue in 1996, FSIS concluded and informed Congress that a regulation establishing an ambient air temperature at which eggs must be held and transported would not address the underlying food safety problems, and that the problem could be dealt with effectively only in the context of a broader process examining a variety of issues in addition to ambient air temperatures. As part of the 1998 Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies (P.L. 105–86), however, Congress provided that $5 million of FSIS' annual appropriation will be available for obligation only after the Agency promulgates a final rule to implement the refrigeration and labeling requirements included in the 1991 EPIA amendments.

FSIS and FDA are now looking at how best to address the food safety concerns associated with shell eggs in the context of their mutual, HACCP-based, farm-to-table food safety strategy. FSIS and FDA believe that comprehensive shell egg regulations must address the public health risks identified; that such regulations must be fully considered in an open, public process; and that each regulation adopted must have been considered in light of available alternatives and be consistent with other laws and regulations.

FSIS and FDA, in furtherance of their commitment to develop a comprehensive strategy for shell eggs, have undertaken the following actions:

(1) *Time-temperature Conference.* A 3-day technical conference on November 18–20, 1996, provided a forum for information on temperature control interventions and verification techniques in the transportation and storage of meat, poultry, seafood, and eggs and egg products. The egg session included many informative technical presentations and policy discussions on the issue of implementing the EPIA's 45 °F ambient temperature requirement. The opportunity to submit written comments to supplement the record was provided.

(2) *Transportation ANPR.* In a related activity, FSIS and FDA published a joint ANPR (61 FR 58780) soliciting information on issues related to ensuring the safety of potentially hazardous foods during transportation. The agencies posed a range of regulatory and non-regulatory options, and solicited information to help them assess the risks and decide what approaches are best suited to addressing those risks. The comment period on this ANPR closed on February 20, 1997. Fifty-two comments have been received.

(3) *Risk Assessment.* The agencies are conducting a quantitative risk assessment for shell eggs. The project is being conducted by a multidisciplinary team of scientists from USDA, FDA, and academia. Begun in December, 1996, it is intended to (a) provide a more definitive understanding of the risks of egg-associated foodborne disease; (b) assist in evaluating risks and ways in which the risks might be reduced; and (c) verify data needs and prioritize data collection efforts. A draft report on risks of SE in eggs and egg products is on the FSIS Homepage and was presented at a technical meeting in September 1997. The draft report of the risk assessment team will be available for public comment and subject to modification based on that input before being made final. Interested persons are encouraged to provide any data or information relevant to the risk assessment for use in the analysis.

(4) *Research.* The Agencies are undertaking efforts to initiate:

—a nationwide surveillance program for SE and SE phage-type 4 to track the spread among layer flocks.

—research (in conjunction with USDA's Agricultural Research Service) on the molecular and virulence comparison of U.S. SE phage-type 4 with isolates from other parts of the world (human and poultry).

(5) *Dialogue.* FDA and FSIS intend to engage affected industry, Federal and State regulatory agencies, and business organizations in an open, on-going dialogue regarding steps they might take voluntarily to address the SE problem and ways in which the Federal agencies might help such efforts.

(6) *Forthcoming FDA/FSIS Actions.* As stated above, because there are actions that can be taken at this time to reduce the risk of foodborne illness from shell eggs, FDA intends to publish shortly a proposal to (1) require that retail food stores and food service establishments hold shell eggs under refrigeration and (2) require safe handling statements on the labeling of shell eggs that have not been treated to destroy *Salmonella* microorganisms that might be present. In that proposal, FDA will solicit comments and information concerning these two matters. FDA requests that comments or information submitted in response to this ANPR also be submitted in response to FDA's proposed rule if such comments or information are relevant to the issues raised therein. In addition, as stated above, FSIS intends to act to amend its regulations to require that shell eggs packed for consumer use be stored and transported at an ambient temperature that does not exceed 45 °F.

Information Requested

FDA and FSIS have available a wide range of mechanisms for administering the laws for which they are responsible. The agencies are interested in the public's views on what regulations may be required to reduce the public health risk of SE in shell eggs, including any performance standards that might be developed.

One approach might be a process-oriented rule similar to the agencies' HACCP regulations for meat, poultry, and seafood. Regulations may be proposed to mandate HACCP-like process controls to reduce the microbiological and other food safety hazards in shell egg production, processing and handling. Such an approach requires each business to develop controls that are best suited to its particular processes and products. The agencies are interested in comments on whether HACCP-like controls could be effective against SE in eggs, in how many producers are presently using HACCP-like controls, and in the overall costs of these controls. The agencies are interested in how such a program would affect small entities.

The agencies may achieve public health objectives by providing guidance to interested parties as a companion to or in lieu of regulations. The agencies

provide a variety of technical information and guidance materials to industries that must comply with Federal laws, to State and local officials, and to consumers. These materials range from general advice to fairly detailed examples or ''models'' of ways in which a plant may ensure compliance with a particular statutory or regulatory provision. Such guidance may be particularly useful for smaller plants with limited resources.

A third general approach would be a Federal-State cooperative program under which overall regulatory oversight is left primarily to State agencies using mutually agreed-upon standards and procedures and Federal assistance. The agencies frequently work cooperatively with State and local government authorities. FDA currently participates in a formal Federal-State cooperative program for the interstate shipment of two commodities, Grade A milk and shellfish.

The agencies believe that a comprehensive, effective program for the control of SE in shell eggs is likely to require some combination of these three general approaches. The following sets out questions the answers to which, the agencies believe, will help them to shape a program that will be useful in reducing risk at each stage in the shell egg farm-to-table continuum.

Production

Should the patchwork of voluntary quality assurance (QA) programs be made consistent with a single, national standard for flock-based quality assurance programs, and be applicable to all producers? Does there need to be more uniformity among the QA programs to assure consumers that producers in all States are uniformly doing all they can to reduce the frequency of SE-contaminated eggs, and to provide ''a level playing field'' among competing producers in the various States?

Should the agencies establish minimum QA requirements for all commercial shell egg producers? This might be accomplished through rulemaking or some form of cooperative program with the States. Should the microbiological testing under such a program be done by a third party (someone other than the producer) to ensure test uniformity and the integrity of the program? Should the agencies require the submission of testing data so that they can identify ways to improve the program, including possible justification for regional variations, verify the overall effectiveness of the program, track the prevalence of emerging strains of SE and, as necessary, identify the need for additional testing programs or other interventions required to protect human or animal health? Should a QA program be voluntary?

Processing

In-shell pasteurization of shell eggs is a relatively new technological development by which harmful bacteria are destroyed without significantly altering the nature of the egg. Were this technology viable for broad scale adoption by producers, it could conceivably significantly reduce the risk of foodborne illness through the destruction of any SE in the egg at the time of processing. The agencies seek comments and information that would address the current viability of in-shell pasteurization for eggs. What factors will determine whether and when in-shell pasteurization of eggs could be applied to the whole industry? Comments should address technological and cost factors.

FSIS and FDA believe that there are many interventions that might be applied during processing that would reduce the risk to consumers from SE in shell eggs. The agencies could continue to defer to States, or processors could be required to use only shell eggs from production facilities adhering to a QA program meeting national standards. This would enable each processor to identify and control all hazards, including SE, that might be introduced into the product during processing. The systems would address those factors known to influence SE growth in shell eggs during processing (principally the age and temperature of the eggs), precluding the necessity of developing detailed prescriptive regulations attempting to specify how such control should be achieved. The agencies would like comments on how such processing requirements might best be structured.

Another alternative might be a sliding scale approach similar to that under consideration by the European Union. Under this approach, a specific egg temperature is not required, but a ''sell by'' date is mandatory, which would vary depending on the temperatures at which eggs are maintained. Assuming packed eggs are transported and stored at an ambient air temperature of 45 °F, the primary determinant of the temperature of eggs in commercial channels will be the temperature of the eggs when they are shipped from the packer. To provide an incentive for processors to chill eggs before shipping, yet retain flexibility to accommodate reasonable alternatives to an absolute temperature requirement, a regulation might prescribe a range of ''sell-by'' dates based on the egg temperature achieved by the packer. However, such an approach might be difficult to verify and enforce. The agencies would like comments on the feasibility and advisability of this kind of approach.

Retail

FDA intends shortly to propose regulations to require that food retail and food service establishment hold eggs under refrigeration. As explained elsewhere in this document, FDA believes that these actions are measures that can be taken at this time to reduce the risk of foodborne illness from shell eggs. Pursuant to this ANPR, both agencies will consider other matters that affect eggs at retail as part of the comprehensive farm-to-table solution that the agencies ultimately put in place.

The agencies are interested in whether retail stores should require their suppliers to use temperature recording devices, or affix temperature indicating devices on the egg cases or cartons, to help ensure that the eggs have not been subject to temperature abuse during transportation. Could any requirement for delivery at 45 °F be enforced effectively as a matter of contract between the processors (vendors) and the retail stores (purchasers)? Should the agencies consider regulations to effect these changes?

Restaurants and Food Service Operations

Restaurants, food service operators, and many retail stores that prepare food for immediate consumption are regulated primarily by State and local governments. Should the agencies take a more direct role, or should they continue to rely on the *Food Code* to provide guidance on the maintenance and preparation of eggs and encourage State and local authorities to adopt and enforce those standards?

The agencies believe that much of what must be done to reduce the risk of foodborne disease transmission in restaurants and other food service facilities involves education and training. Food service managers play an increasingly important role in food safety, and they must place a high priority on employee hygiene and proper food handling techniques. Thus, the Federal agencies are currently exploring with industry representatives (the major associations representing retail stores and restaurants as well as major food producer groups), representatives of State and local regulatory agencies, and consumer groups the possibility of a partnership

that would build on current programs to develop a comprehensive, national food safety education and training campaign directed at people who work in restaurants and other food service facilities, people who work in retail stores, and at consumers. This campaign would include lesson plans and materials for classroom training that could be used in public school curricula as well as in food service settings.

Household Consumers

A primary tool for reducing the risk of foodborne disease among consumers is education. To ensure that consumers are fully and adequately informed of the significant risks associated with SE in eggs and how to best avoid these risks, FDA shortly will be proposing certain labeling requirements for eggs. The agencies also plan to intensify their consumer education efforts in the coming months and to institute permanent food safety education programs that will help consumers protect themselves from all food safety hazards.

Thus, by this notice, FDA and FSIS are requesting comments and information on a variety of issues concerning ways to reduce the risk to the public health from SE in shell eggs. These issues need to be addressed comprehensively by the agencies. FSIS and FDA welcome discussion and comments on the issues in this notice and other issues related to the subject. The agencies are particularly interested in comments about alternatives that would minimize the impact on small entities.

Done in Washington, DC, on May 11, 1998.

Thomas J. Billy,

Administrator, FSIS.

William B. Schultz,

Deputy Commissioner for Policy, FDA.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 273 and 274

RIN 0584–AC61

Food Stamp Program: Electronic Benefits Transfer Benefit Adjustments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This rule proposes to revise Food Stamp Program regulations pertaining to State agencies' ability to make adjustments to a recipient account in an Electronic Benefits Transfer (EBT) system, in order to correct a system error or an out-of-balance condition. EBT stakeholders have proposed the changes so that States and their processors can correct errors when they are identified, rather than 10 days after the advance notice has been sent to the household. The changes would enable State agencies to correct errors in a more timely manner, and bring EBT closer in line with current commercial Electronic Funds Transfer (EFT) practices. This rule also proposes to revise the formula

for recovering funds under the re-presentation rule.

DATES: Comments must be received on or before July 20, 1998, to be assured of consideration.

ADDRESSES: Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be datafaxed to the attention of Mr. Cohen at (703) 605–0232, or by e-mail to jeff__cohen@fcs.usda.gov. Written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Cohen at the above address or by telephone at (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be non-significant for purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregrate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley Watkins, the Under Secretary for Food, Nutrition and Consumer Service, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 for rules related to non-quality control (QC) liabilities or Part 283 for rules related to QC liabilities; (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

Adjustments

The Food and Nutrition Service (FNS) has been contacted by a number of State agencies and other interested stakeholders regarding its policy on making adjustments to EBT-issued benefits when a system error has resulted in an out-of-balance condition. During normal EBT processing for an authorized transaction, settlement is completed when the transaction acquirer has been properly credited for an amount equal to the amount debited from the household's benefit allotment. System malfunctions, however, can cause an interruption to this process. For purposes of this proposed regulation, an out-of-balance settlement condition exists when system errors or other technical malfunctions cause an interruption to the end-to-end settlement process from acquirer back to issuer, resulting in a settlement condition that does not reflect the authorized transaction. In the commercial EFT environment, such conditions are routinely corrected via a manual adjustment to the customer's account without notification to the account holder. In this proposed rule, an adjustment is defined as a debit or credit transaction initiated to correct a system error or to correct an out-of-balance condition identified in the settlement process. Current food stamp regulations, however, do not allow such adjustments without prior notification to the food stamp household.

Regulations found at 7 CFR 274.12(f)(4) require that State agencies establish a date when the household's benefits become available to them each month. By regulation, State agencies are not allowed to make adjustments to the food stamp allotment after the availability date. This is in keeping with the coupon system which has no mechanism to retrieve benefits after they have been issued to the household. However, FNS recognizes that EBT provides additional tools that were not available in the coupon system. Corrections to technical errors can be made quickly and accurately, where previously, in the paper system, they could not be made. Commercial operating rules for EFT systems and the QUEST EBT operating rules have provisions which require adjustments for system errors. (The QUEST operating rules set forth EBT requirements for those state agencies that choose to issue benefits under the QUEST service mark.) This proposed rule would allow adjustments, after the availability date, to correct a system error.

Proposing this change leads to the need to propose a second change. Section 11(e)(10) of the Food Stamp Act of 1977, as amended, gives households the right to a fair hearing over any action that affects their participation in the program. This section stipulates that to exercise this right households must request a fair hearing in a timely manner following receipt of an individual notice of the agency's action. Further, households have the right to delay the State agency's action and receive benefits at the previous level, pending a decision by the hearing official. Regulations implementing these provisions of the Act and signifying when a notice of action is necessary are found in § 273.15.

With some exceptions, which are specified in the regulation, households must be given an advance notice of 10 days before reduction in benefits can be put in place. The excepted situations in the regulation allow for concurrent benefit adjustment and notice—referred to as adequate notice. That is, State agencies are allowed to notify households at the same time as an action is taken.

The nature of EBT settlement adjustments makes timeliness critical. A 10-day advanced notice, as required by current regulation, could have a negative impact on the State agency's ability to correct the out-of-balance condition. For example, to provide notice 10 days prior to the adjustment action could risk benefits no longer being available since, unlike certification actions, the household has immediate access to the benefits in question. For this reason, in § 273.13(a)(3)(vii), we propose that State agencies be allowed to send an adequate notice when the action is taken. This would allow the error condition to be corrected expeditiously, while preserving the household's right to adequate notice and a fair hearing.

In order to ensure that the rights of the household are protected, this rule proposes to only allow adjustments under the following conditions:

(1) Adjustments would not be allowed against future month benefits, i.e, against those benefits that were not in the account at the time of the original transaction.

(2) In those cases in which a household no longer has benefits available from the issuance month, this rule proposes that the funds may be recovered using the re-presentation procedures set forth in 7 CFR 274.12(l). If, however, there are sufficient benefits remaining to cover only part of the adjustment, the adjustment may be made using the remaining balance, with the difference being subject to the re-presentation procedures.

(3) If the household is no longer receiving benefits, the State agency is under no further obligation to recover the funds.

(4) The household shall be given adequate notice at the time of the adjustment in accordance with procedures set forth in 7 CFR 273.13(a)(3). An adequate notice includes an explanation of the action being taken, the reason for the action, the household's right to a fair hearing, and the household's right to continued benefits.

(5) If the household chooses to have a fair hearing and elects to have benefits continued pending the fair hearing decision, the State agency would be required to re-credit the adjusted amount until the dispute is adjudicated. If the hearing finds in favor of the State agency, the State agency would re-process the adjustment (debit) for the full amount credited at the time of the fair hearing request. If there are no benefits remaining in the household's account at the time the State agency action is upheld, the State agency shall make the adjustment from the next month's benefit. If the household is no longer receiving benefits when the fair hearing decision is rendered, the State agency would be under no further obligation to recover the funds. An adjustment would not be made if the affected retailer is no longer on the EBT system.

(6) Adjustments would only be allowed when auditable documentation is available to substantiate the out-of-balance condition.

Finally, it has come to the Department's attention that EBT regulations do not provide time frames by which system errors must be resolved. The Department, therefore, proposes that all system errors be corrected within 5 business days. After 5 business days, any recovery of funds from a recipient's account must be handled through the re-presentation process. The Department believes that unless the adjustment is made within a reasonable time, recipients will be unable to understand the connection between the original transaction and the adjustment action. The 5-day time frame also ensures that households negatively impacted by a system error will not have to wait unreasonably long periods of time for resolution.

Re-presentations

Current regulations give State agencies the option to implement a re-presentation system to recoup certain losses in instances specified in 7 CFR 274.12(l). Regulations at 7 CFR 274.12(l)(1)(iii) stipulate that the rate of re-presentation be $50 for the first month and $10 or 10 percent—whichever is greater—in subsequent months, until the re-presentation is completely repaid. These amounts were originally selected so that the electronic system would be consistent with the claims process in place in the coupon system. Some State agencies have argued that the variation in the rate of re-presentation for the first month and subsequent months makes it particularly difficult to implement an automated re-presentation system. Currently, only one State agency has implemented re-presentation because of the burden of programming a system which would meet these requirements. Therefore, the Department proposes that the required rate differentiation between the first month and subsequent months be eliminated; the State agency would have the option to debit the benefit allotment of a household following the insufficient funds transaction in an amount equal to at least $10, but no higher than 10 percent of the allotment. This deduction would be repeated on a monthly basis until the re-presentation is completely repaid. State agencies may choose to recover funds at an amount less than 10% of the allotment, but shall apply the lesser repayment amount to all households.

Implementation

The Department is proposing that the provisions of this rulemaking be implemented 30 days after publication of the final rule. The Department also proposes to allow variances resulting from implementation of the provisions of the final rule to be excluded from error analysis for 120 days from the required implementation date, in accordance with 7 CFR 275.12(d)(2)(vii).

List of Subjects

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative procedures and practices, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR parts 273 and 274 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 273 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.13, a new paragraph (a)(3)(vii) is added to read as follows:

§ 273.13 Notice of adverse action.

(a) * * *

(3) * * *

(vii) An EBT system-error has occurred during the redemption process, resulting in an out-of-balance settlement condition. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

* * * * *

3. In § 273.15, the fourth sentence of paragraph (k)(1) is revised and three new sentences are added after the fourth sentence to read as follows:

§ 273.15 Fair hearings.

* * * * *

(k) *Continuation of benefits.*

(1) * * * If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances except in the case of an EBT adjustment, in which case another adjustment (debit) shall be made immediately to the household's account for the total amount erroneously credited when the fair hearing was requested. If there are no benefits remaining in the household's account at the time the State agency action is upheld, the State agency shall make the adjustment from the next month's benefits. If the household is no longer receiving benefits at the time of the fair hearing decision, the State agency is under no further obligation to recover the debt. An adjustment shall not be done if the affected retailer is no longer on the EBT system. * * *

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PART 274—ISSUANCE AND USE OF COUPONS

4. In § 274.12:

a. Paragraph (f)(4) is revised;

b. Paragraph (f)(7)(iii) is amended by removing the second sentence;

c. Paragraph (l) introductory text is redesignated as the first sentence of paragraph (l)(1) introductory text;

d. Paragraph (l)(1) introductory text is amended by redesignating the last sentence as the introductory text of paragraph (l);

e. Paragraph (l)(1)(iii) is revised;

f. Paragraphs (l)(2), (l)(3), (l)(4), and (l)(5) are redesignated as (l)(3), (l)(4), (l)(5), and (l)(6); and

g. A new paragraph (l)(2) is added.

The revisions and additions read as follows:

§ 274.12 Electronic Benefit Transfer system issuance approval standards.

* * * * *

(f) *Household participation* * * *

(4) *Issuance of benefits.* State agencies shall establish an availability date for household access to their benefits and inform households of this date.

(i) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) A State may make adjustments to an account after the availability date only to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

(A) Adjustments shall be made no later than 5 business days after the out-of-balance condition occurred.

(B) Adjustments shall not be made against a future month's benefit. If there are sufficient benefits remaining to cover only part of the adjustment, the adjustment may be made with the remaining balance.

(C) The household must be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter.

(D) Should the household dispute the adjustment, the benefits must be re-credited to the household's account pending resolution.

(E) Should a State agency wish to process an adjustment against future month benefits, such an action shall be in accordance with re-presentation procedures found in paragraph (l) of this section.

(iii) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f)(7)(iii) of this section.

* * * * *

(l) *Re-presentation.* * * *

(1) * * *

(iii) The State agency may debit the benefit allotment of a household following the insufficient funds transaction in any amount which equals at least $10 or up to 10% of the transaction. This amount will be deducted monthly until the total owed is paid. State agencies may opt to re-present at a level that is less than the 10% maximum, however, this lesser amount must be applied to all households.

(2) When a system-error has resulted in an out-of-balance condition at settlement, and the State agency is unable to recover an erroneous credit as an adjustment, a re-presentation may be made as follows:

(i) the state agency shall debit the benefit allotment of a household monthly in an amount equal to at least $10 or up to 10% of the allotment until the re-presentation is completely paid.

(ii) notice shall be provided prior to the month re-presentation occurs and shall state the amount of the reduction in the benefit allotment.

* * * * *

Dated: May 12, 1998.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 98–13227 Filed 5–18–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Segelflugzeugbau Model ASW–19 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher Segelflugzeugbau (Alexander Schleicher) Model ASW–19 sailplanes. The proposed action would require inspecting the tow release cable guide fittings for the correct mounting, and, if the fittings are mounted in the front of the bulkhead, moving the fitting to the rear of the bulkhead. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent premature release of the tow cable during take-off, which could result in loss of the sailplane.

DATES: Comments must be received on or before June 26, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–05–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASW–19 sailplanes. The LBA reports that some of the older Model ASW–19 sailplanes were designed with the tow release cable mounted on the front side of the bulkhead per the type design. The LBA has received reports of premature release during towing operations on these Model ASW–19 sailplanes. This inadvertent release is occurring when the tow release cable guide is properly adjusted in the rear position, but is secured to the front of the bulkhead.

This condition, if not corrected, could result in premature release of the sailplane's tow cable during take-off operations with a possible loss of sailplane controllability.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 18, dated July 3, 1984, which specifies procedures for inspecting the cable guide release fitting for the correct bulkhead mounting. If the cable guide release fitting is mounted on the front of the bulkhead, the service information specifies procedures for moving the cable guide release fitting to the rear of the bulkhead and then adjusting the cable's neutral travel.

The LBA classified this service bulletin as mandatory and issued German AD 84–115, dated July 16, 1984, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASW–19 sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the tow release cable guide fitting for the proper location on the bulkhead. If the cable guide release fitting is mounted on the front of the bulkhead, the proposed AD would require removing the cable guide release fitting, remounting it on the rear of the bulkhead, and adjusting the cable's neutral travel. Accomplishment of the proposed actions would be in accordance with Alexander Schleicher Technical Note No. 18, dated July 3, 1984.

Cost Impact

The FAA estimates that 100 sailplanes in the U.S. registry would be affected by the proposed AD.

Accomplishing the proposed inspection would take approximately 1 workhour per sailplane, at an average labor rate of approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $6,000, or $60 per sailplane.

The proposed modification would take approximately 2 workhours, at an average labor rate of $60 per hour. Parts cost approximately $20 per sailplane. Based on these figures, the total cost impact of the proposed modification on U.S. operators is estimated to be $14,000, or $140 per sailplane.

Compliance Time

The compliance time of the proposed AD is in calendar time instead of hours time-in-service (TIS). The average monthly usage of the affected sailplane ranges throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to ensure that all of the owners/operators of the affected sailplane have inspected the mount location of the tow release cable guide fitting within a reasonable amount of time, the FAA is proposing a compliance time of 90 days.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher Segelflugzeugbau: Docket No. 98–CE–05–AD.

Applicability: Model ASW–19 sailplanes, serial numbers 19001 through 19405, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 90 days after the effective date of this AD, unless already accomplished.

To prevent premature release of the tow cable during take-off, which could result in loss of the sailplane, accomplish the following:

(a) Inspect the tow release cable guide fittings for front or rear mount on the bulkhead of the sailplane in accordance with the Actions section in Alexander Schleicher Technical Note (TN) No. 18, dated July 3, 1984.

Note 2: It is recommended that the maintenance manual pages called out in the INSTRUCTIONS section of Alexander Schleicher TN No. 18 be exchanged with the current pages in the maintenance manual.

(b) If the cable guide fitting is mounted on the front of the bulkhead, prior to further flight, remove the fitting and remount the cable guide fitting on the rear of the bulkhead in accordance with the Actions section in Alexander Schleicher TN No. 18, dated July 3, 1984.

(c) After remounting the cable fitting, prior to further flight, check the neutral travel of the cable and adjust if necessary, in accordance with the Actions section in Alexander Schleicher TN No. 18, dated July 3, 1984.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to Alexander Schleicher Technical Note No. 18, dated July 3, 1984, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in German AD No. 84–115, dated July 16, 1984.

Issued in Kansas City, Missouri, on May 11, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13198 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–78–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes. This proposal would require repetitive inspections to detect cracking of the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking in the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box. Such cracking and discrepancies could result in reduced structural integrity of the airplane.

DATES: Comments must be received by June 18, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–78–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–78–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300–600 series airplanes. The DGAC advises that, during full-scale fatigue testing of the Airbus Model A300 series airplane, cracking was found on the forward doubler angle at the junction with the lower surface of the wing. This cracking originated in the seventh fastener hole, starting from the front, on the face of the doubler angle that is attached to the lower surface of the wing. The DGAC has received reports of cracking in the same location on in-service airplanes, which has been attributed to fatigue caused by the relative movement between the fuselage skin panel and the lower wing skin. Such fatigue cracking, if not corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–53–6110, dated April 8, 1997, which describes procedures for performing repetitive detailed visual inspections to detect cracking of the doubler angle, and repetitive detailed external visual inspections to detect discrepancies (i.e., damage, stretching, cracking, or distortion) of the fasteners that connect the doubler angle and the bottom panel of the center wing box. This service bulletin also describes procedures for replacing discrepant fasteners with new fasteners, and performing follow-on corrective actions. (These follow-on actions include performing a rotating probe inspection of the fastener hole to detect cracking or distortion and repairing the fastener hole, if cracking is detected.)

The DGAC classified Airbus Service Bulletin A300–53–6110 as mandatory and issued French airworthiness directive 97–383–240(B), dated December 17, 1997, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued Service Bulletin A300–53–6063, dated December 12, 1996, which describes procedures for replacing the existing doubler angle with a longer splice plate and an improved doubler angle. Accomplishment of this replacement would eliminate the need for the repetitive inspections described previously.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. This proposed AD also would provide for an optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to correct cracking before it represents a hazard to the airplane.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in Airbus Service Bulletin A300–53–6110, this proposed AD would not permit further flight if any crack is found in the doubler angle, or if any discrepancy is found in the fastener holes or the fasteners that connect the doubler angle and the bottom panel of the center wing box. The FAA has determined that, because of the safety implications and consequences associated with such cracking or discrepancies, any subject doubler angle that is found to be cracked or any fastener that is found to be discrepant must be replaced prior to further flight.

Operators also should note that, although Airbus Service Bulletin A300–53–6110 specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 54 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $6,480, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating

action specified in Airbus Service Bulletin A300–53–6063 that would be provided by this AD action, it would take approximately 109 work hours to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $4,028 per airplane. Based on these figures, the cost impact of that optional terminating action would be $10,568 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98–NM–78–AD.

Applicability: Model A300–600 series airplanes, on which Airbus Modification 11044 or Airbus Modification 11045 (reference Airbus Service Bulletin A300–53–6063, dated December 12, 1996) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Perform a detailed visual inspection to detect cracking of the doubler angle, and a detailed external visual inspection to detect discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, on the left and right sides of the airplane, in accordance with Airbus Service Bulletin A300–53–6110, dated April 8, 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter, repeat the inspections of the doubler angle and fasteners at intervals not to exceed 2,400 flight cycles.

(1) For airplanes on which a detailed visual inspection has been performed within the last 2,400 flight cycles prior to the effective date of this AD, in accordance with Structural Significant Item (SSI) 57–10–19 of the Airbus A300–600 Maintenance Review Board (MRB) Document: Inspect within 2,400 flight cycles after the most recent SSI inspection.

(2) For airplanes on which a detailed visual inspection has not been performed within the last 2,400 flight cycles prior to the effective date of this AD, in accordance with Structural Significant Item (SSI) 57–10–19 of the Airbus A300–600 Maintenance Review Board (MRB) Document: Inspect at the time specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii), as applicable.

(i) For airplanes that have accumulated 6,600 or more total flight cycles as of the effective date of this AD: Inspect within 750 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated more than 3,100 total flight cycles, but less than 6,600 total flight cycles as of the effective date of this AD: Inspect within 1,500 flight cycles after the effective date of this AD.

(iii) For airplanes that have accumulated 3,100 total flight cycles or less as of the effective date of this AD: Inspect prior to the accumulation of 4,600 total flight cycles.

(b) If any discrepancy is found in a fastener that connects the doubler angle and the bottom panel of the center wing box during any detailed external visual inspection performed in accordance with paragraph (a) of this AD: Prior to further flight, remove the discrepant fastener, and perform a rotating probe inspection to detect discrepancies of the fastener holes, in accordance with Airbus Service Bulletin A300–53–6110, dated April 8, 1997.

(1) If no discrepancy is found in any fastener hole, prior to further flight, install a new fastener, in accordance with the service bulletin. Thereafter, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,400 flight cycles.

(2) If any discrepancy is found in any fastener hole, prior to further flight, except as provided by paragraph (e) of this AD, repair in accordance with the service bulletin, and accomplish the actions required by paragraph (c) of this AD.

(c) If any crack is found in the doubler angle during any detailed visual inspection performed in accordance with paragraph (a) of this AD, prior to further flight, modify the doubler angle in accordance with Airbus Service Bulletin A300–53–6063, dated December 12, 1996. Accomplishment of the modification constitutes terminating action for both repetitive inspection requirements of this AD.

(d) Accomplishment of the modification in accordance with Airbus Service Bulletin A300–53–6063, dated December 12, 1996, constitutes terminating action for the repetitive inspection requirements of this AD.

(e) If any discrepancy of a fastener hole is found during any inspection of a discrepant fastener as required by paragraph (b) of this AD, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–383–240(B), dated December 17, 1997.

Issued in Renton, Washington, on May 13, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–13311 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–6]

RIN 2120 AA66

Proposed Modification of the San Diego Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify the San Diego, CA, Class B airspace area. Specifically, this action proposes to lower the upper limit of the San Diego Class B airspace area from 12,500 feet mean sea level (MSL) to 10,000 feet MSL; expand the western and eastern boundaries of the airspace area; and move the southern boundary north to align with the POGGI Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC). The FAA is proposing this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the San Diego Class B airspace area while accommodating the concerns of airspace users.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 97–AWA–6, 800 Independence Avenue, SW., Washington DC 20591. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and should be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWA–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661), using a modem and suitable communications software.

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677 for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65655). This rule discontinued the use of the term ''Terminal Control Area'' and replaced it with the designation ''Class B airspace area.'' This change in terminology is reflected in this NPRM.

The Class B airspace area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increases the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Class B airspace areas. To date, the FAA has established a total of 29 Class B airspace areas. The FAA is proposing to take action to modify or implement the application of these proven control areas to provide greater protection for air traffic in the airspace areas most commonly used by passenger-carrying aircraft.

The standard configuration of a Class B airspace area contains three

concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of a Class B airspace area normally should not exceed 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Related Rulemaking Actions

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

Pre-NPRM Public Input

In early 1996 the San Diego Airspace Users Group (SDAUG), an ad hoc committee which represents all major users and the United States Marine Corps (USMC), proposed a review of the current San Diego Class B airspace area. The review was prompted as a result of the addition of diversified Marine helicopter and fixed-wing assets at Naval Air Station Miramar, CA, which was renamed Marine Corps Air Station (MCAS) Miramar on October 1, 1997. The committee recognized a need to provide greater protection for arriving and departing turbojet aircraft at MCAS Miramar, and facilitate a method for easier circumnavigation of the Class B airspace area by nonparticipating aircraft.

The SDAUG analyzed the San Diego Class B airspace area and developed recommendations for modifying the existing airspace design. The group met regularly at various locations throughout the San Diego area for approximately one year, and submitted written comments concerning a modification of the San Diego Class B airspace area.

As announced in the **Federal Register** on August 12, 1996, (61 FR 41818), two pre-NPRM airspace meetings were held on October 2, 1996, in San Diego, CA, and October 16, 1996, in San Marcos, CA. The purpose of these meetings was to provide local airspace users an opportunity to present input on the design of the planned modifications of the San Diego Class B airspace area. All comments received in response to the informal airspace meetings and the subsequent comment periods were considered and/or incorporated into this notice of proposed modification. Verbal and written comments received by the FAA and the Agency's responses are summarized below.

Analysis of Comments

Some commenters expressed concern that lower performance aircraft departing Montgomery Field could not remain clear of the ceiling of the proposed San Diego Class B airspace area without circling over a congested area.

The FAA agreed with this concern and, as a result, removed a portion of airspace from the proposed design southwest of MCAS Miramar. The design as proposed would shift the boundary slightly north in this area and would allow those aircraft operating VFR and departing Runway 28R at Montgomery Field the opportunity to climb straight ahead until past the shoreline, thus providing additional climb mileage.

A comment was received regarding the addition to Area I northeast of MCAS Miramar. The concern was that by adding to Area I as described in the planned modification, aircraft departing Gillespie Field could experience problems remaining clear of the Class B airspace area.

The FAA agrees in part with this comment. The addition of this area to Area I was necessary to contain high performance aircraft within Class B airspace while executing the Tactical Air Navigation System (TACAN) Runway 24R approach at Miramar. However, to mitigate this concern, a portion of the depiction of the VFR flyway in this area was moved one mile, placing it east of a prominent geographical landmark (the island in the middle of the San Vincente Reservoir), which would establish an easily recognizable visual boundary and allow for VFR navigation clear of terrain. The proposed VFR flyway depiction has been modified to pass east of the island in San Vincente Reservoir, providing a clearer visual depiction of the Class B airspace area.

The Proposed Amendment

The FAA proposes to amend 14 CFR part 71 by modifying the San Diego Class B airspace area. Specifically, this proposal (depicted in the attached chart) would lower the upper limit of the San Diego Class B airspace area from 12,500 feet MSL to 10,000 feet MSL, expand the western and eastern boundaries, and move the southern boundary northward to align with the POGGI VORTAC. This change would improve the boundary definition and decrease the overall size of the Class B airspace. The amended design includes a redundant system of boundary depiction to the maximum extent. The primary boundary definition uses latitude and longitude points (Global Positioning System [GPS] waypoints) and, wherever feasible, the boundaries are also aligned with reference to existing ground-based navigational aids and prominent geographical landmarks. The proposed modification of the San Diego Class B airspace area results in net reduction in the size of Class B airspace, while improving the containment of turbo-jet aircraft within the Class B airspace area. This would constitute improved efficiency of the airspace and a clearer definition of Class B airspace area boundaries to aid VFR GA aircraft.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) would generate benefits that justify its minimal costs and is not a ''significant regulatory action'' as defined in the Executive Order; (2) is

not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

The Federal Aviation Administration (FAA) proposes to modify the San Diego International Lindbergh Airport Class B airspace area by lowering the ceiling from 12,500 feet MSL to 10,000 feet MSL, expanding and moving lateral boundaries, and modifying base altitudes. As a result of relocation of turbojet aircraft and helicopters to Marine Corps Air Station (MCAS) Miramar, the FAA has determined that modification of the San Diego Class B airspace area would improve the efficiency of aircraft movement in the airspace and enhance safety for VFR and IFR airspace users.

The proposed modifications would generate several benefits for system users. These benefits include clearer boundaries defining the Class B airspace sub-areas, greater flexibility in navigating the airspace for VFR operators, increased airspace for aircraft transitioning to and from satellite airports, improved containment for turbojet aircraft arriving and departing MCAS Miramar (containment refers to aircraft operating in controlled airspace and receiving ATC separation from other aircraft), and reduced potential for midair collisions in the San Diego terminal area.

The proposed rule would impose minimal costs on FAA or airspace users. Printing of aeronautical charts which reflect the changes to the Class B airspace would be accomplished during a scheduled chart printing, and would result in no additional costs for plate modification and updating of charts. Notices would be sent to all pilots within a 100-mile radius of the San Diego airport at a total cost of $100.00 for postage. No staffing changes would be required to maintain the modified Class B airspace.

The San Diego Class B airspace would be designated by a triple redundant boundary depiction system which uses longitude and latitude (GPS waypoints), existing navaids, and visual references to identify the airspace boundaries. These three options, two of which are available currently, will not cause airspace users to incur any additional equipment costs. In view of the minimal cost of compliance, enhanced safety, and operational efficiency, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small businesses and other small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility analysis if a rule will have a significant economic impact on a substantial number of small entities.

The FAA certifies that this proposed rule would impose only minimal additional costs (for notices sent to pilots informing them of the proposed airspace modification) upon potential operators in the San Diego Class B airspace. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan. That plan, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

AWP CA B San Diego, CA [Revised]

San Diego, (Lindbergh Field), CA (Primary Airport)
(lat. 32°44′01″N., long. 117°11′23″W.)
MCAS Miramar, Miramar, CA (Primary Airport)
(lat. 32°52′06″N., long. 117°08′33″W.)
POGGI VORTAC (PGY)
(lat. 32°36′37″N., long. 116°58′45″W.)
Oceanside VORTAC (OCN)
(lat. 33°14′26″N., long. 117°25′04″W.)
Julian VORTAC (JLI)
(lat. 33°08′26″N., long. 116°35′09″W.)
Mission Bay VORTAC (MZB)
(lat. 32°46′56″N., long. 117°13′32′W.)

Boundaries

Area A. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the JLI 262° radial and the eastern edge of Warning Area 291 (W–291) (lat. 32°59′31″N., long. 117°47′25″W.); thence east via the JLI 262° radial to intercept the MZB 325° radial

(lat. 33°02′13″N., long. 117°26′14″W.); thence southeast via the MZB 325° radial to intercept the JLI 257° radial (lat. 32°58′53″N., long. 117°23′27″W.); thence west via the JLI 257° radial to intercept the OCN 200° radial (lat. 32°57′02″N., long. 117°32′35″W.); thence south via the OCN 200° radial to the intersection of the OCN 200° radial and the eastern edge of W–291 (lat. 32°45′23″N., long. 117°37′35″W.); thence northwest via the eastern edge of W–291 to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the eastern edge of W–291 and the OCN 200° radial (lat. 32°45′23″N., long. 117°37′35″W.); thence north via the OCN 200° radial to intercept the JLI 257° radial (lat. 32°57′02″N., long. 117°32′35″W.); thence east via the JLI 257° radial to intercept the OCN 182° radial (lat. 32°58′25″N., long. 117°25′44″W.); thence south via the OCN 182° radial to intercept the PGY 290° radial (lat. 32°45′02″N., long. 117°26′17″W.); thence east via the PGY 290° radial to the intersection of the PGY 290° radial and the 32°43′22″ latitude line (lat. 32°43′22″N., long. 117°20′47″W.); thence east via the 32°43′22″ latitude line to intercept the OCN 171° radial (lat. 32°43′22″N., long. 117°19′15″W.); thence south via the OCN 171° radial to intercept the PGY 279° radial (lat. 32°39′14″N., long. 117°18′28″W.); thence west via the PGY 279° to intercept the eastern edge of W–291 (lat. 32°41′27″N., long. 117°35′27″W.); thence northwest along the eastern edge of W–291 to the point of beginning.

Area C. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 182° and the JLI 257° radials (lat. 32°58′25″N., long. 117°25′44″W.); thence east via the JLI 257° radial to intercept the MZB 325° radial (lat. 32°58′53″N., long. 117°23′27″W.); thence southeast via the MZB 325° radial to intercept the OCN 167° radial (lat. 32°54′08″N., long. 117°19′31″W.); thence south via the OCN 167° radial to intercept the MZB 310° radial (lat. 32°50′28″N., long. 117°18′30″W.); thence southeast via the MZB 310° radial to the Mission Bay VORTAC; thence west via the MZB 279° radial to intercept the OCN 171° radial (lat. 32°47′48″N., long. 117°20′04″W.); thence south via the OCN 171° radial to the intersection of the OCN 171° radial and the 32°43′22″ latitude line (lat. 32°43′22″N., long. 117°19′15″W.); thence west via the 32°43′22″ latitude line to intercept the PGY 290° radial (lat. 32°43′22″N., long. 117°20′47″W.); thence west via the PGY 290° radial to intercept the OCN 182° radial (lat. 32°45′02″N., long. 117°26′17″W.); thence north via the OCN 182° radial to the point of beginning.

Area D. That airspace extending upward from 1,800 feet MSL to and including 3,200 feet MSL and that airspace extending upward from 6,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of MZB 325° and the JLI 257° radials (lat. 32°58′53″ N., long. 117°23′27″ W.); thence southeast direct to the intersection of I–5, I–805, and the JLI 247° radial (lat. 32°54′31″ N., long. 117°13′39″ W.); thence south direct to the intersection of I–5 and Genessee Avenue (lat. 32°53′13″ N., long. 117°13′40″ W.); thence south direct to the intersection of Genessee Avenue and Route 52 (lat. 32°50′49″ N., long. 117°12′08″ W.); thence northwest direct to the intersection of the westerly extension of the Montgomery Field Runway 10L/28R centerline and the OCN 167° radial (lat. 32°53′11″ N., long. 117°19′15″ W.); thence north via the OCN 167 radial to intercept the MZB 325° radial (lat. 32°54′08″ N., long. 117°19′31″ W.); thence northwest via the MZB 325° radial to the point of beginning.

Area E. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the MZB 008° and the JLI 252° radials (lat. 32°58′21″ N., long. 117°11′37″ W.); thence east via the JLI 252° radial to intercept the OCN 135° radial (lat. 32°59′32″ N., long. 117°07′24″ W.); thence southeast via the OCN 135° radial to intercept the MZB 027° radial (lat. 32°58′45″ N., long. 117°06′29″ W.); thence southwest via the MZB 027° radial to intercept the JLI 247° radial (lat. 32°56′45″ N., long. 117°07′35″ W.); thence southwest via the JLI 247° radial to intercept the MZB 008° radial (lat. 32°55′05″ N., long. 117°12′10″ W.); thence north via the MZB 008° radial to the point of beginning.

Area F. That airspace extending upward from the surface to and including 3,200 feet MSL and that airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of I–5, I–805, and the JLI 247° radial (lat. 32°54′31″ N., long. 117°13′39″ W.); thence southeast direct to the departure end of MCAS Miramar Runway 24R (lat. 32°51′49″ N., long. 117°09′55″ W.); thence east direct to the approach end of MCAS Miramar Runway 28 centerline (lat. 32°51′57″ N., long. 117°07′37″ W.); thence east direct to the intersection of the Gillespie Field Class D airspace area and a line extending west from the southern boundary of the MCAS Miramar Class E airspace area (lat. 32°51′14″ N., long. 117°03′03″ W.); thence southwest direct to the intersection of the Gillespie Field Class D airspace area and the MZB 065° radial (lat. 32°51′00″ N., long. 117°03′10″ W.); thence west direct to the intersection of Santo Road, Route 52, and the 32°50′25″ N. latitude line (lat. 32°50′25″ N., long. 117°05′48″ W.); thence west via the 32°50′25″ N. latitude line to the intersection of 32°50′25″ N. latitude line and Route 52 (lat. 32°50′25″ N., long. 117°09′50″ W.); thence northwest direct to the intersection of Route 52 and I–805 (lat. 32°50′50″ N., long. 117°10′40″ W.); thence west direct to the intersection of Route 52 and Genessee Avenue (lat. 32°50′49″ N., long. 117°12′08″ W.); thence northwest direct to the intersection of I–5 and Genessee Avenue (lat. 32°53′13″ N., long. 117°13′40″ W.); thence north via I–5 to the point of beginning.

Area G. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of the OCN 135° and the JLI 247° radials (lat. 32°57′38″ N., long. 117°05′10″ W.); thence southeast via the OCN 135° radial to intercept the south boundary line of the MCAS Miramar Class E airspace area (lat. 32°52′03″ N., long. 116°58′35″ W.); thence west along the southern boundary line to the intersection of the southern boundary line and the Gillespie Field Class D airspace area 4.3-mile arc (lat. 32°51′14″ N., long. 117°03′03″ W.); thence west direct to the approach end of MCAS Miramar Runway 28 (lat. 32°51′57″ N., long. 117°07′37″ W.); thence west direct to the departure end of MCAS Miramar Runway 24R (lat. 32°51′49″ N., long. 117°09′55″ W.); thence northwest direct to the intersection of I–5, I–805, and the JLI 247° radial (lat. 32°54′31″ N., long. 117°13′39″ W.); thence northeast via the JLI 247° radial to the point of beginning.

Area H. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 135° and the JLI 247° radial (lat. 32°57′38″ N., long. 117°05′10″ W.); thence northeast via the JLI 247° radial to intercept the OCN 130° radial (lat. 32°58′33″ N., long. 117°02′38″ W.); thence southeast via the OCN 130° radial to the PGY 006° radial (lat. 32°54′12″ N., long. 116°56′33″ W.); thence south via the PGY 006° radial to the southern boundary line of the MCAS Miramar Class E airspace area (lat. 32°52′22″ N., long. 116°56′47″ W.); thence west along the southern boundary line to intercept the OCN 135° radial (lat. 32°52′03″ N., long. 116°58′35″ W.); thence northwest via the OCN 135° radial to the point of beginning.

Area I. That airspace extending upward from 3,200 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 130° and the JLI 247° radials (lat. 32°58′33″ N., long. 117°02′38″ W.); thence northeast via the JLI 247° radial to intercept the OCN 127° radial (lat. 32°59′08″ N., long. 117°01′01″ W.); thence southeast via the OCN 127° radial to intercept the PGY 010° radial (lat. 32°55′11″ N., long. 116°54′52″ W.); thence south via the PGY 010° radial to the southern boundary line of the MCAS Miramar Class E airspace area (lat. 32°52′37″ N., long. 116°55′24″ W.); thence west along the southern boundary line to intercept the PGY 006° radial (lat. 32°52′22″ N., long. 116° 56′47″ W.); thence north via the PGY 006° radial to intercept the OCN 130° radial (lat. 32°54′12″ N., long. 116°56′33″ W.); thence northwest via the OCN 130° radial to the point of beginning.

Area J. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the southern boundary line of the MCAS Miramar Class E airspace area and the OCN 132° radial (lat. 32°52′28″ N., long. 116°56′13″ W.); thence southeast via the OCN 132° radial to intercept the JLI 201° radial (lat. 32°44′36″ N., long. 116°45′59″ W.); thence south via the JLI 201° radial to intercept the PGY 083° radial (lat. 32°37′37″ N., long. 116°49′08″ W.); thence west via the PGY 083° radial to the POGGI VORTAC; thence northeast via the PGY 069 radial to intercept the JLI 207° radial (lat. 32°38′25″ N., long. 116°53′13″ W.); thence northeast via the JLI 207° radial to intercept the MZB 099° radial (lat. 32°43′45″ N., long. 116°50′02″ W.); thence west via the MZB 099° radial to the Mission Bay VORTAC; thence via the MZB 310° radial to intercept the OCN 167° radial (lat. 32°50′28″ N., long. 117°18′30″

W.); thence north via the OCN 167° radial to intercept the westerly extension of the Montgomery Field Runway 10L/28R centerline (lat. 32°53′11″ N., long. 117°19′15″ W.); thence southeast direct to the intersection of Route 52 and Genessee Avenue (lat. 32°50′49″ N., long. 117°12′08″ W.); thence east direct to the intersection of Route 52 and I–805 (lat. 32°50′50″ N., long. 117°10′40″ W.); thence southeast direct to the intersection of Route 52 and the 32°50′25″ N. latitude line (lat. 32°50′25″ N., long. 117°09′50″ W.); thence east along the 32°50′25″ N. latitude line to the intersection of the 32°50′25″ N. latitude line, Route 52, and Santo Road (lat. 32°50′25″ N., long. 117°05′48″ W.); thence east direct to the intersection of the MZB 065° radial and the Gillespie Field Class D airspace area (lat. 32°51′00″ N., long. 117°03′10″ W.); thence northeast direct to the intersection of the Gillespie Field Class D airspace area and a line extending west from the southern boundary of the MCAS Miramar Class E airspace area (lat. 32°51′14″ N., long. 117°03′03″ W.); thence east via the southern boundary line to the point of beginning.

Area K. That airspace extending upward from 5,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 132° and the MZB 091° radials (lat. 32°46′31″ N., long. 116°48′29″ W.); thence east via the MZB 091° radial to intercept the JLI 191° radial (lat. 32°46′22″ N., long. 116°40′14″ W.); thence south via the JLI 191° radial to intercept the PGY 083° radial (lat. 32°38′20″ N., long. 116°42′04″ W.); thence west via the PGY 083° radial to intercept the JLI 201° radial (lat. 32°37′37″ N., long. 116°49′08″ W.); thence north via the JLI 201° radial to intercept the OCN 132° radial (lat. 32°44′36″ N., long. 116°45′59″ W.); thence northwest via the OCN 132° radial to the point of beginning.

Area L. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of the OCN 171° and the MZB 279° radials (lat. 32°47′48″N., long. 117°20′04″W.); thence east via the MZB 279° radial to the Mission Bay VORTAC; thence east via the MZB 099° radial to the MZB 099° radial 10 DME fix (lat. 32°45′21″N., long. 117°01′49″W.); thence south direct to the intersection of the MZB 10-mile arc and the easterly extension of the Lindbergh Field Runway 09/27 centerline (lat. 32°42′02″N., long. 117°03′11″W.); thence southwest direct to the intersection of the PGY 300° radial and the MZB 10-mile arc (lat. 32°39′47″N., long. 117°05′13″W.); thence northwest via the PGY 300° radial to the PGY 300° radial 13.5 DME fix (lat. 32°43′22″N., long. 117°12′36″W.); thence west direct to the OCN 171° radial 31.4 DME fix (lat. 32°43′22″N., long. 117°19′15″W.); thence north via the OCN 171° radial to the point of beginning; excluding the VFR corridor described as that airspace extending upward from 3,301 feet MSL to, but not including, 4,700 feet MSL in an area beginning at the Mission Bay VORTAC; thence east direct to the intersection of I–8, I–805, and the MZB 099° radial (lat. 32°46′11″N., long. 117°07′55″W.); thence south direct to intersection of I–5 and Highway 94 (lat. 32°42′49″N., long. 117°08′51″W.); thence southerly via I–5 to the intersection of I–5 and the MZB 10-mile arc (lat. 32°39′00″N., long. 117°06′17″W.); thence clockwise via the MZB 10-mile arc to intersect the Silver Strand Boulevard (lat. 32°37′54″N., long. 117°08′23″W.); thence northwesterly via the Silver Strand Boulevard to the Hotel del Coronado (south end of Coronado Island) (lat. 32°40′51″N., long. 117°10′41″W.); thence north direct to the point of beginning.

Area M. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the MZB 099° radial 10 DME fix (lat. 32°45′21″N., long. 117°01′49″W.); thence east via the MZB 099° radial to the MZB 099° radial 13 DME fix (lat. 32°44′53″N., long. 116°58′18″W.); thence south direct to the intersection of the easterly extension of the Lindbergh Field Runway 09/27 centerline and the MZB 13-mile arc (lat. 32°41′11″N., long. 116°59′42″W.); thence southwest direct to the intersection of the MZB 13-mile arc and the PGY 300° radial (lat. 32°38′14″N., long. 117°02′03″W.); thence northwest via the PGY 300° radial to the intersection the PGY 300° radial and the MZB 10-mile arc (lat. 32°39′47″N., long. 117°05′13″W.); thence northeast direct to the intersection of the Lindbergh Field Runway 09/27 centerline and the MZB 10-mile arc (lat. 32 42′02″N., long. 117°03′11″W.); thence north direct to the point of beginning.

Area N. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the MZB 099° radial 13 DME fix (lat. 32°44′53″N., long. 116°58′18″W.); thence east via the MZB 099° radial to the MZB 099° radial 15 DME fix (lat. 32°44′34″N., long. 116°55′58″W.); thence south direct to the intersection of the easterly extension of the Lindbergh Field Runway 09/27 centerline and the MZB 15-mile arc (lat. 32°40′37″N., long. 116°57′24″W.); thence southwest direct to the intersection of the MZB 15-mile arc and the PGY 300° radial (lat. 32°37′13″N., long. 116°59′58″W.); thence northwest via the PGY 300° radial to the PGY 300° radial 13 DME fix (lat. 32°38′14″N., long. 117°02′03″W.); thence northeast direct to the intersection of the Lindbergh Field Runway 09/27 centerline and the MZB 13-mile arc (lat. 32°41′11″N., long. 116°59′42″W.); thence north direct to the point of beginning.

Area O. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL beginning at the MZB 099° radial 15 DME fix (lat. 32°44′34″N., long. 116°55′58″W.); thence east via the MZB 099° radial to intercept the JLI 207° radial (lat. 32°43′45″N., long. 116°50′02″W.); thence southwest along the JLI 207° radial to intercept the PGY 069° radial (lat. 32°38′25″N., long. 116°53′13″W.); thence southwest via the PGY 069° radial to the POGGI VORTAC; thence northwest via the PGY 300° radial to intercept the MZB 15-mile arc (lat. 32°37′13″N., long. 116°59′58″W.); thence northeast direct to the intersection of the MZB 15-mile arc and the easterly extension of the Lindbergh Field Runway 09/27 centerline (lat. 32°40′37″N., long. 116°57′24″W.); thence north direct to the point of beginning.

Area P. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the PGY 279° radial and the eastern edge of W–291 (lat. 32°41′27″N., long. 117°35′27″W.); thence east via the PGY 279° radial to the intersection of the PGY 279° radial, the MZB 10-mile arc, and Silver Strand Boulevard (lat. 32°37′54″N., long. 117°08′23″W.); thence northeast direct to the intersection of the MZB 10-mile arc and I–5 (lat. 32°39′00″N., long. 117°06′17″W.); thence northeast direct to the intersection of MZB 10-mile arc and the PGY 300° radial (lat. 32°39′47″N., long. 117°05′13″W.); thence southeast via the PGY 300° radial to the POGGI VORTAC; thence west via the PGY 264° radial to the eastern edge of W–291 (lat. 32°33′40″N., long. 117°31′13″W.); thence north via the eastern edge of W–291 to the point of beginning.

Area Q. That airspace extending upward from 2,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 171° radial 31.4 DME fix (lat. 32°43′22″N., long. 117°19′15″W.); thence east direct to the intersection of the PGY 300° radial 13.5 DME fix (lat. 32°43′22″N., long. 117°12′36″W.); thence southeast via the PGY 300° radial to the intersection of the PGY 300° radial and the MZB 10-mile arc (lat. 32°39′47″N., long. 117°05′13″W.); thence southwest direct to the intersection of the MZB 10-mile arc and I–5 (lat. 32°39′00″N., long. 117°06′17″W.); thence southwest direct to the intersection of the PGY 279° radial, the MZB 10-mile arc, and Silver Strand Boulevard (lat. 32°37′54″N., long. 117°08′23″W.); thence west via the PGY 279° radial to intercept the OCN 171° radial (lat. 32°39′14″N., long. 117°18′28″W.); thence north via the OCN 171° radial to the point of beginning; excluding that airspace contained in the VFR corridor as described in Area L.

Area R. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 135° and the JLI 257° radials (lat. 33°01′36″N., long. 117°09′51″W.); thence east via the JLI 257° radial to intercept the OCN 115° radial (lat. 33°03′53″N., long. 116°58′19″W.); thence via the OCN 115° radial to intercept the PGY 019° radial (lat. 33°00′13″N., long. 116°49′06″W.); thence south via the PGY 019° radial to intercept the OCN 121° radial (lat. 32°56′51″N., long. 116°50′29″W.); thence northwest via the OCN 121° radial to intercept the JLI 247° radial (lat. 33°00′25″N., long. 116°57′28″W.); thence southwest via the JLI 247° radial to intercept the MZB 027° radial (lat. 32°56′45″N., long. 117°07′35″W.); thence northeast via the MZB 027° radial to intercept the OCN 135° radial (lat. 32°58′45″N., long. 117°06′29″W.); thence northwest via the OCN 135° radial to the point of beginning.

Area S. That airspace extending upward from 6,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the JLI 262° and the MZB 325° radials (lat. 33°02′13″N., long. 117°26′14″W.); thence east via the JLI 262° radial to intercept the OCN 115° radial (lat. 33°05′14″N., long. 117°01′43″W.); thence southeast via the OCN 115° radial to intercept the JLI 257° radial (lat. 33°03′53″N., long. 116°58′19″W.); thence west via the JLI 257° radial to intercept the

MZB 008° radial (lat. 33°01′21″N., long. 117°11′07″W.); thence south via the MZB 008° radial to intercept the JLI 247° radial (lat. 32°55′05″N., long. 117°12′10″W.); thence southwest via the JLI 247° radial to the intersection of I–5, I–805, and the JLI 247° radial (lat. 32°54′31″N., long. 117°13′39″W.); thence northwest direct to the intersection of the JLI 257° and the MZB 325° radials (lat. 32°58′53″N., long. 117°23′27″W.); thence northwest via the MZB 325° radial to the point of beginning.

Area T. That airspace extending upward from 3,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 127° and the JLI 247° radials (lat. 32°59′08″N., long. 117°01′01″W.); thence northeast via the JLI 247° radial to intercept the OCN 121° radial (lat. 33°00′25″N., long. 116°57′28″W.); thence southeast via the OCN 121° radial to intercept the PGY 019° radial (lat. 32°56′51″N., long. 116°50′29″W.); thence south via the PGY 019° radial to intercept a line extending east from the southern boundary of the MCAS Miramar Class E airspace area (lat. 32°53′14″N., long. 116°51′58″W.); thence west along the southern boundary line to intercept the PGY 010° radial (lat. 32°52′37″N., long. 116°55′24″W.); thence north via the PGY 010° radial to intercept the OCN 127° radial (lat. 32°55′11″N., long. 116°54′52″W.); thence northwest via the OCN 127° radial to the point of beginning.

Area U. That airspace extending upward from 3,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the MZB 008° and the JLI 257° radials (lat. 33°01′21″N., long. 117°11′07″W.); thence east via the JLI 257° radial to intercept the OCN 135° radial (lat. 33°01′36″N., long. 117°09′51″W.); thence southeast via the OCN 135° radial to intercept the JLI 252° radial (lat. 32°59′32″N., long. 117°07′24″W.); thence southwest via the JLI 252° radial to intercept the MZB 008° radial (lat. 32°58′21″N., long. 117°11′37″W); thence north via the MZB 008° radial to the point of beginning.

Issued in Washington, DC, on May 12, 1998.

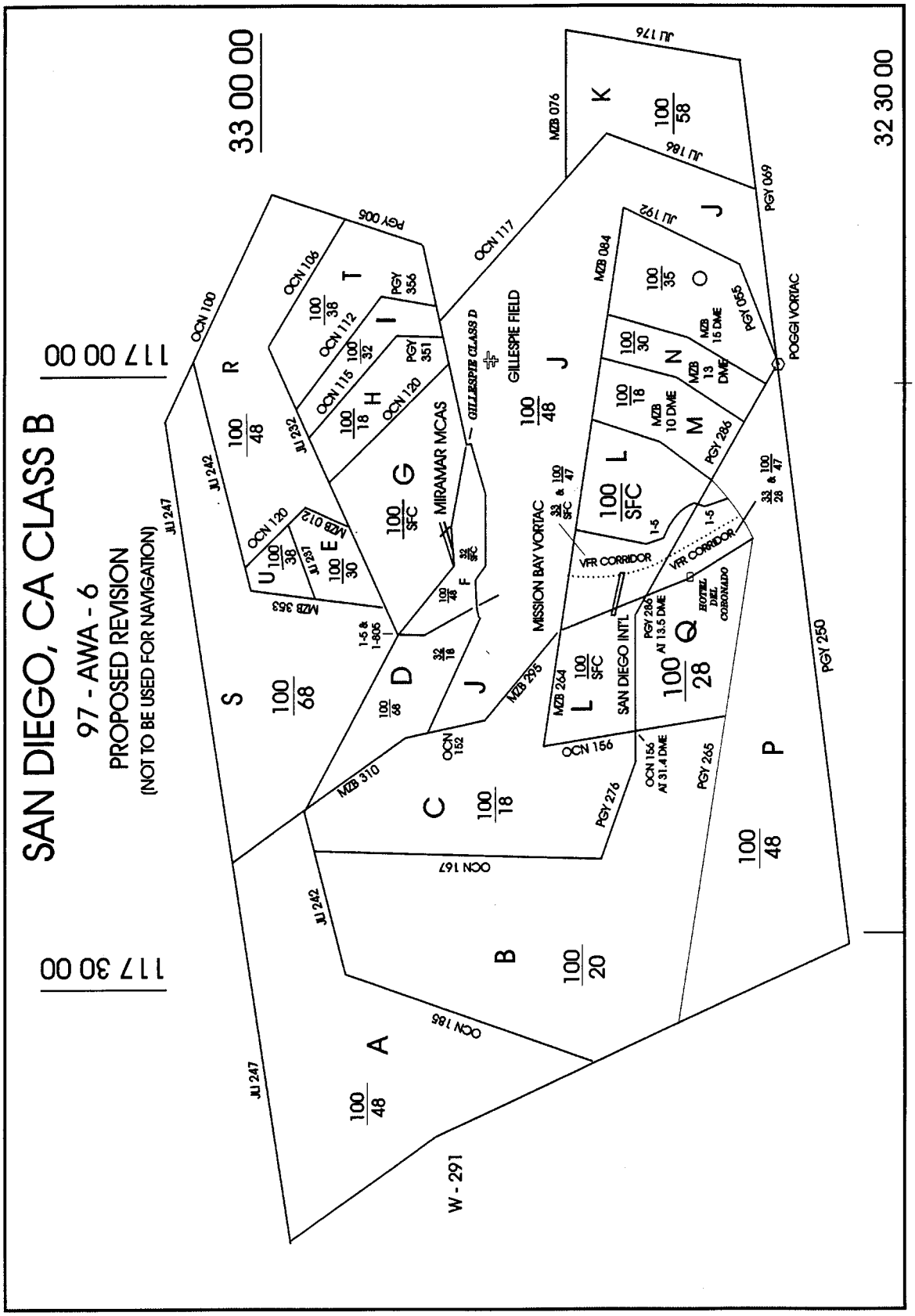
John S. Walker,

Program Director for Air Traffic Airspace Management.

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—San Diego, CA, Class B Airspace Area.

BILLING CODE 4910–13–P



[FR Doc. 98–13263 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 161

[Docket No. RM98–7–000]

Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet

May 13, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its Standards of Conduct regulations to require that interstate natural gas pipelines identify the names and addresses of their marketing affiliates on their web sites on the Internet and update the information within three business days of any change. Pipelines would also be required to state the dates the information was last updated.

DATES: Written comments must be received by the Commission by June 19, 1998.

ADDRESSES: File comments with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Stuart Fischer, Office of General Counsel, Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426. Telephone: (202) 208–1033.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn System Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

Notice of Proposed Rulemaking

May 13, 1998.

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations in Part 161.3 to require that interstate natural gas pipelines identify the names and addresses of their marketing affiliates on their web sites on the Internet. By doing so, the Commission will make it easier for the public to identify each interstate gas pipeline's current marketing affiliates. The Commission believes that the new regulation is necessary to further assist its oversight efforts as well as to permit shippers to effectively monitor transportation transactions between pipelines and their affiliated marketers.

I. Background

The Commission, in Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2] established rules intended to prevent interstate natural gas pipelines from providing preferential treatment to their marketing or brokering affiliates. Specifically, the Commission adopted Standards of Conduct (codified at Part 161 of the Commission's regulations)[3] and reporting requirements (codified in sections 161.3(h)(2) and 250.16).[4]

The Standards of Conduct govern the relationships between pipelines and their marketing affiliates. In general, they provide that pipelines and their marketing affiliates must function independently of each other. Pipelines cannot favor their marketing affiliates in providing transportation services or in providing transportation information or transportation discounts not available to non-affiliates.

Currently, there is no requirement in the Commission's regulations for pipelines to report the names of their marketing affiliates or changes in the status of marketing affiliates through, for example, acquisitions of new affiliates, or divestitures, consolidations, or name changes of prior affiliates. While pipelines are required to list all of their affiliated entities, including marketing entities, in their annual Form No. 2 filings, annual data cannot keep abreast of changes, and the Form No. 2 does not require pipelines to identify which entities are ''marketing'' or ''brokering''

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] 18 CFR 161.3 (1997).

[4] 18 CFR 161.3(h)(2) and 250.16 (1997).

affiliates as defined under section 161.2(c) of the Commission's regulations.[5]

Despite the absence of a specific regulatory requirement to identify marketing affiliates, several pipelines have identified the names of their marketing affiliates in their tariffs and/or standards of conduct and filed updates whenever there were changes in identity. However, two pipelines recently decided to stop listing the names of their marketing affiliates in their standards of conduct because of the administrative burden of filing the information.[6] As discussed below, by requiring the affiliate information to be posted on the Internet, pipelines will be able to provide up-to-date information with minimal administrative burden.

II. Proposed Changes to Regulations

The Commission proposes to add section 161.3(l), which would require pipelines to post on their web sites on the Internet, the names and addresses of their marketing affiliates and to update this information within three business days of any change. A pipeline would also be required to state the date the information was last updated. In Order No. 587 *et seq.*, the Commission began phasing out the use of electronic bulletin boards in favor of posting information on pipeline web sites on the Internet.[7] The standards for Internet posting are set out in section 284.10 of the Commission's regulations, as amended in Order No. 587–G.[8]

III. Discussion

The Commission believes that the new regulation is necessary to further assist its oversight efforts as well as to enable the public to monitor pipeline-affiliate transactions. It is important for the public and the Commission to have an updated picture of the pipelines' marketing affiliates to determine if pipelines are complying with the regulatory requirements. Marketing affiliations change rapidly in today's business climate. In *El Paso* and *Texas Gas*, the pipelines stated that they had made three changes to the lists of their marketing affiliates in the previous year. Moreover, the recent trend of mergers of large pipelines makes it imperative to determine which marketing entities are affiliated with which pipelines.[9] The proposed requirements would ensure that the Commission and the public can identify pipelines' marketing affiliates.

To minimize the burden on pipelines and the Commission's administrative resources, we propose that each pipeline post the names and addresses of its marketing affiliates on the pipeline's web site on the Internet. In this way, the burden on pipelines would be slight, as pipelines already are required to have web sites under Order No. 587–C and would only have to add the affiliate information.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[10] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities. The proposed rules will benefit small entities by making it easier for small customers to monitor pipelines' transactions with their marketing affiliates.

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[11] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[12] This proposed rule falls within the categorical exclusion which specifies that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.[13] The proposed rule also falls under the categorical exclusion for rules concerning the sale, exchange, and transportation of natural gas that requires no construction of facilities.[14] Thus, neither an environmental impact statement nor an environmental assessment is required.

VI. Information Collection Statement

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden:

Data collection	No. of respondents	No. of responses	Hours per response	Total annual hours
FERC–592	74	1	5	370

[5] 18 CFR 161.2(c) (1997).

[6] In *El Paso Natural Gas Pipeline Company*, 79 FERC ¶ 61,086 (1997) (*El Paso*), the pipeline stated that it had revised its standards of conduct three times in the previous year to reflect changes to corporate structure or names of marketing affiliates and believed that such filings were unnecessary. The Commission ruled that El Paso did not have to revise its standards of conduct each time the identity of a marketing affiliate changed. More recently, in *Texas Gas Transmission Corp.*, 83 FERC ¶ 61,048 (1998) (*Texas Gas*), the Commission accepted a pipeline's request to delete the names of its marketing affiliates from its standards of conduct. In *El Paso*, the pipeline stated that the names of its marketing affiliates were publicly available through the capacity allocation log on its electronic bulletin board. In *Texas Gas*, the pipeline stated that it would post on its electronic bulletin board a list of its marketing affiliates.

[7] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996); Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997); Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997). In Order No. 587–G, the Commission issued regulations requiring that pipelines conduct all transportation transactions over the Internet, rather than over electronic bulletin boards, by June 1, 1999. 63 FR 20072 (April 23, 1998).

[8] *Id.* (to be codified at 18 CFR 284.10).

[9] Recent examples include Natural Gas Pipeline Company of America's merger with KN Energy, and El Paso Natural Gas Company's merger with Tennessee Gas Pipeline Company and its affiliated pipelines.

[10] 5 U.S.C. 601–612 (1996).

[11] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[12] 18 CFR 380.4 (1997).

[13] 18 CFR 380.4(a)(5) (1997).

[14] 18 CFR 380.4(a)(27) (1997).

Total Annual Hours for Collection (Reporting + Recordkeeping, (if appropriate))=370.

Information Collection costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost per respondent to be the following:

Annualized Capital/Startup Costs	.....
Annualized Costs (Operations & Maintenance)	$19,492
Total Annualized Costs ..	$19,492

All pipelines are currently required to maintain web sites and so the Commission estimates that the burden to post the information will be minimal once it has been assembled.

The Office of Management and Budget's (OMB's) regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–592, Marketing Affiliates of Interstate Pipelines.

Action: Proposed collections.

OMB Control No: 1902–0157.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On occasion.

Necessity of the information: The proposed rule revises the requirements contained in 18 CFR 161.3. Pipelines will be required to post their affiliates' names and addresses on the Internet, update this information within three business days of whenever a change takes place, and state the date the information was last updated. These proposed revisions will not change the format of what is currently reported to the Commission. However, the revisions of § 161.3 will require additional information that must be posted on the Internet.

The posting of affiliate information on the Internet meets the Commission's need for access to up-to-date information to monitor self-implementing activities of the pipelines to ensure that transportation services are being carried out in non-discriminatory manner and can also respond to the increased pace of changes in the energy marketplace without unduly burdening market participants. The information is maintained by natural gas pipeline companies involved in transactions with marketing affiliates and their functional equivalents. The Commission through its monitoring activities, collects and analyzes data for use in making decisions. The monitoring activities focus on areas affecting competition such as: preferential treatment to affiliates; cross-subsidization and cost shifting between customers and affiliates; fair access to information; unfair activities and noncompliance with the Commission's regulations.

Additionally, the information is also used by nonaffiliated shippers or others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for formal proceedings following the filing of a complaint.

These data are required to carry out the Commission's policies in accordance with the general authority in Sections 311, 501, and 504 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301–3432) and Sections 4, 5, 7, 8, 10, 14, 16 and 20 of the Natural Gas Act (NGA) (15 U.S.C. 717–717w). The information required is mandatory.

Internal Review: The Commission has reviewed the requirements pertaining to the standards of conduct for interstate natural gas pipeline companies and their marketing affiliates or brokering companies and determined that the proposed revisions are necessary to ensure nondiscriminatory access to the national pipeline grid through the investigation of complaints and allegations of abuses. Requiring such information assists the Commission to protect customers from excessive transportation rates and service discrimination. As pipelines are permitted to implement more nontraditional forms of pricing and service, the Commission will monitor the industry to ensure the pipelines are not being preferential or unduly discriminatory, charging unjust and unreasonable rates, or providing services that are inadequate or undesirable.

These requirements conform to the Commission's plan for efficient information collection, communication, and management through the advancement of information technology within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirement.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 88 First Street, NE, Washington, DC 20426 [Attention: Michael Miller, Division of Information Services, Phone: (202) 208–1415, fax: (202) 273–0873, email:michael.miller@ferc.fed.us]

For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285]

VII. Comment Procedures

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking. All comments in response to this notice must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. RM98–7–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before June 18, 1998. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 888 First Street, NE, Washington, DC, 20426, during business hours. Additionally, comments can be viewed and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

List of Subjects in 18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Massey concurred with a separate statement attached.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 161, Chapter I, Title 18 of the *Code of Federal Regulations,* as set forth below.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for Part 161 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In Section 161.3, paragraph (l) is added to read as follows:

§ 161.3 Standards of conduct.

* * * * *

(1) A pipeline must post the names and addresses of its marketing affiliates on its web site on the public Internet and update the information within three business days of any change. A pipeline must also state the date the information was last updated. Postings must conform with the requirements of § 284.10 of this chapter.
(Issued May 13, 1998)

MASSEY, Commissioner, *concurring*:

The general proposal in today's Notice of Proposed Rulemaking has my full support. A requirement that pipelines report on their Internet websites the names of their marketing affiliates or changes in the status of their marketing affiliates is necessary to provide the Commission and the industry with information that may otherwise be unavailable in today's rapidly changing market environment.

The proposal raises one question, however, which I believe should be pursued further. Is the proposed requirement that pipelines update information about their affiliates within three business days of a change in status sufficient to meet the needs of the Commission and the industry at large?

I would prefer a requirement for reporting within 24 hours, and want to make three points related to this issue. First, the NOPR offers no justification for the three day time period. Second, it is widely known that with today's technology, updating information of this nature on a pipeline website is not burdensome. Therefore, the ability to add vital information in a shorter time frame would not be problematic. Finally, the Commission has required companies in the other industries we regulate to make similar updates in a 24-hour time period. For example, the Commission's regulations require electric transmission providers to report to the Commission and on the OASIS each emergency that results in any deviation from the Commission's standards of conduct within 24 hours of the deviation.[1] Pipelines are required to post discounts given to their affiliates within 24 hours of the time at which gas first flows.[2] Hydroelectric power licensees have agreed to reporting deviations from state water quality standards within 24 hours.[3] As the industry contemplates the Commission's proposal, I would welcome comment on this issue.

[1] 18 CFR 37.4(a)(2) (1997).

[2] 18 CFR 161.3(h)(2) (1997).

[3] Wisconsin Electric Power Company, 80 FERC ¶ 62,215 (1997).

William L. Massey,
Commissioner.

[FR Doc. 98–13293 Filed 5–18–98; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

18 CFR Part 385

Federal Energy Regulatory Commission.

[Docket No. PL98–1–000]

Public Access to Information and Electronic Filing; Request For Comments and Notice of Intent to Hold technical Conference

May 13, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Request for Comments for Notice of Intent to Hold Technical Conference.

SUMMARY: The Federal Energy Regulatory Commission (Commission) intends to develop a comprehensive information management system that accepts filings and disseminates information electronically. The Commission seeks public comment to determine the best way to implement its electronic filing initiative. After reviewing the comments, the Commission intends to hold a technical conference to discuss its implementation process.

DATES: Comments are due June 30, 1998.

ADDRESSES: Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Brooks Carter, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 501–8145.

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, (202) 208–2246.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

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Finally, the complete text on diskette in WorkPerfect format may be purchased from the Commission's copy contractor, La Dorn System Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

I. Introduction

The growing availability and use of electronic media and the increasing competitiveness of the natural gas, oil, and electric industries are compelling the Federal Energy Regulatory Commission (Commission) to manage its information resources more strategically. Advances in information technology (IT) permit the filing and dissemination of information at a faster rate and more cost-effectively than the traditional paper distribution methods.

The Commission's ultimate goal is to improve its use of IT to reduce regulatory burdens, cut processing times, simplify filing processes, and generate better information for use by its staff, regulated industries, and the public. The Commission views its efforts to implement a system for electronic filing and dissemination of information as a large and complex undertaking. It believes that certain

aspects of electronic filings could be implemented relatively easily in the near future, whereas, other aspects may take more time to develop.

The Commission requests comments to determine the best way to proceed with developing a faster, more cost-efficient electronic system for accepting, processing, and distributing the myriad of filings that it currently receives on paper. The Commission requests input from the industries it regulates and other interested parties, including software developers and standards setting organizations. After reviewing the comments, the Commission intends to hold a technical conference to discuss its implementation process and to establish various working groups to investigate the requirements necessary for the Commission to achieve its goal of moving towards a more efficient, cost-effective, paperless environment and the options available to meet that goal. The Commission will issue a separate, later notice announcing the date, time, and location for the technical conference.

II. Background

On November 7, 1997, the Chairman of the Commission hosted a round table forum to discuss reform of the Commission's regulatory processes. The November 7 symposium focused on public access to information and standards for electronic filing. The round-table forum included Commission staff and representatives of oil and natural gas pipelines, electric utilities, hydropower interests, customer groups, and other agencies with experience in electronic filing. The symposium featured a presentation by officials of the National Energy Board of Canada, who described their electronic filing program, and an on-line demonstration of the Federal Communication Commission's (FCC) Internet World Wide Web Site.[1] Generally, the symposium participants enthusiastically supported the Commission's endeavors to further proceed with electronic filing.

The Commission previously has developed regulations for electronic filing of certain information as part of its ongoing effort to improve its ability to process information and provide information to the public. Gas pipelines file tariffs electronically and file various portions of their rate cases in specified electronic format.[2] Electric utilities proposing to merge file certain competitive analyses data electronically.[3] Electric utilities and licensees who file FERC Form No. 1 file that form electronically.[4] Other reports and forms also are filed electronically.[5] The Commission further has encouraged those who comment on proposed rules to file copies of their comments in electronic format on diskette and by Internet E-Mail.[6]

The Commission believes that electronic filing should be more efficient and cost-effective for both the Commission and those filing with the Commission. For the filer, electronic filing is faster than paper filing and eliminates the need to arrange for messenger or other services to hand deliver paper copies of the Commission. For the Commission, electronic filing eliminates the need to process paper filings, and electronic files are easier, and take less space to store than paper files.

Perhaps even more important, electronic files provide enhanced retrieval and document processing capability. Electronic files can be posted on the Internet or other electronic mediums for viewing and downloading. Search and other electronic cataloguing programs can be used to find specific information. Finally, portions of electronic files can be copied and pasted into other documents.

III. Request for Comments

The Commission requests comments that address the issues and questions raised below.

A. Filing Format

Establishing the format(s) for electronically filed documents creates numerous complex requirements, including finding a format(s) that: (1) is easy for the filing party to create; (2) is easy for the Commission to process electronically with minimal human interaction; (3) can be quickly and accurately published on the Commission's home page for viewing and downloading using most common browsers; (4) complies with the record retention requirements of the National Archives and Records Administration (NARA); and (5) is searchable and from which text or other information can be exported into other documents or applications. Commenters should consider these issues in their comments.

The filings the Commission presently accepts, processes, and distributes vary from routine text-only filings to complex environmental and engineering data in natural gas certificate and hydroelectronic filings that include tables, graphs, charts, maps, blueprints, and photographs. Some of these documents are small and could be filed electronically relatively easily. However, some filings are quite large and may require different consideration. The Commission believes that certain types of documents common to all industries, such as tariff filings, could be filed in the same format. However, the Commission does not believe that one particular format would be suitable for all times of filings.

Possible electronic filing formats include, but are not limited to: native proprietary and non-proprietary word processing spreadsheet, or text formats; Standard Generalized Markup Language (SGML); Hypertext Markup Language (HTML); Extensible Markup Language (XML); Portable Document Format (PDF); and Rich Text Format (RTF).

Each format option has its own particular advantages and limitations. For example, using numerous native proprietary and non-proprietary formats is the least expensive option for filers. However, the Commission would have to support all the different software products and versions. Further, anyone downloading the filed documents would also need the same capabilities unless the Commission converts the documents into one usable format.[7] Converting files raises several additional concerns. Different formats do not always accurately convert into the new format. Some conversions do not preserve the original fonts; certain text enhancements such as bolding and underlining may be eliminated; or the conversion drops footnote numbers or converts them to text. This also creates the problem of verifying the accuracy of the converted document.

HTML works well for major natural gas certificate filings because it is relatively easy to incorporate graphs, charts, and other types of information into HTML documents. However, each word processing or spreadsheet application converts to HTML according

[1] Commission staff also demonstrated the Commission's Internet site, which came on-line on November 10, 1997.

[2] 18 CFR 154.4; 18 CFR 385.2011(b); Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies, 60 FR 53019 (Oct. 11, 1995), FERC Stats. and Regs. Regulation Preambles Jan. 1991 to June 1996 ¶31.026 at 31,517 (Sep. 28, 1995).

[3] Inquiry Concerning the Commission's Merger Policy under the Federal Power Act: Policy Statement, 61 FR 68,595 (Dec. 30, 1996), FERC Stats. & Regs. ¶31,044 at 30,135, 30,138 (1996), *order on reconsideration*, 79 FERC ¶61,321 (1997).

[4] 18 CFR 141.1(b)(2); 18 CFR 385.2011(a)(6).

[5] 18 CFR 385.2011(a).

[6] *See* Standards For Business Practices of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 58790 (Nov. 19, 1996), FERC Stats. & Regs. Proposed Regulations ¶32,521 (Nov. 13, 1996).

[7] For example, the FCC accepts tariff documents in 44 different formats and converts the documents to PDF files.

to its own specifications and will not always handle sophisticated formatting options. Additionally, hand coding of HTML may be required to improve the presentation of the document.

SGML and XML may be difficult to use and would require users to purchase additional software. Further, the Commission would have to develop the Document Type Definitions for any filings based on those standards. PDF preserves the integrity of the original document, so that the PDF document looks like the document as if it were printed by the original word processing format. It also converts tables and other graphics. However, it has limited search capabilities and filers would have to purchase Adobe Systems Incorporated's software in order to create documents in PDF format.

This is just a partial list of some of the problems and limitations that the Commission perceives as issues in determining the appropriate format(s) for its electronic filing initiative. Below is a list of questions on which the Commission would like comments to assist it in evaluating different formats it could use for electronic filings. This list is not meant to be all inclusive. Commenters are invited to present any additional information that may be relevant to the Commission's investigation. When responding to the questions, the commenter should note if its response is affected by the type of filing it makes and/or by certain industry-specific requirements.[8]

Specifically, the Commission seeks comments on the following: (1) What format(s) should the Commission consider for its different types of filings (please specify)? (2) What are the pros and cons of each format and what should the Commission and/or filer do to remedy the cons? (3) Are there certain filings for which the Commission can implement electronic filing relatively easily in the near future (please specify)? (4) What types of filings will require more time and effort to implement electronic filing (please specify): (5) How do you think the Commission should proceed in selecting which format(s) to use for which filings?

B. Citations

Another problem with electronic filing is maintaining comparability in citation format between electronic and printed versions of a document. The user of an electronic document must be able to locate the appropriate portion of the document cited by someone who used the paper copy.

As discussed above, PDF format is designed to maintain the structure and page formatting of the original document. Another alternative that eliminates the problems of matching page numbers band improves citation accuracy is for the filer to number the paragraphs in the filing. Numbering paragraphs will permit accurate citation because the numbering is not susceptible to changes resulting from margin or printer settings. (6) What citation format should the Commission establish for electronic filings and issued documents?

C. Signatures

The Commission's regulations require that all filings with the Commission must be signed.[9] The existence of such a requirement, created when documents were filed on paper, raises a number of questions when documents are filed electronically. (7) Is the signature requirement important enough to be retained? (8) If the Commission does not require signatures, how would the filing party verify that the contents of the filing are true? (9) If only certain filings need to be signed, should the Commission establish electronic signature requirements for those specific filings (please specify)?

D. Privileged Material

While much of the information filed with the Commission is subject to public disclosure, the Commission's regulations exempt certain information. For example, site-specific historic preservation information in archaeological survey reports is considered non-public information. (10) How should privilege documents be handled? (11) How should documents be filed that are only partially privileged?

E. Methods of Electronic Filing

The Commission currently receives its filings on 3½-inch diskettes formatted for MS–DOS based computers. However, the Commission has found that diskette-type filings: (1) require time-consuming processing; (2) are cumbersome to store; and (3) are susceptible to viruses. In one instance, in Docket No. CP98–97–000 the Commission received, as a demonstration project, a certificate application from Great Lakes Gas Transmission Limited Partnership which was formatted in HTML on a CD–ROM. With some modifications, the Commission posted the application on its Internet site.

There are several methods the Commission can use to accommodate electronic filings. For very simple filings, such as motions to intervene, the Commission can use an HTML form that intervenors can complete interactively. Information from the intervention could be loaded into a service list database, which in turn could be updated on the Commission's web site. In other cases, the Commission could use an HTML form for basic filer information to which the filer would have the ability to attach files and upload them to the Commission via the Internet. (12) which method(s) should the Commission use for electronic filing: (i) the HTML forms approaches discussed below; (ii) computer-to-computer using a leased line/private network; (iii) uploading to the Commission's electronic bulletin board; or (iv) some other method (please specify)? (13) Should the Commission consider different methods for different types of filings (please specify)? (14) How should the Commission handle large filings?

F. The Hearing Process

Electronic filing of documents will affect the Commission's hearing process in a number of ways. Although motions, pleadings, and testimony are filed with the Commission in the same manner as other filings, discovery requests and responses between and among participants generally are not required to be filed. Discovery often involves unique accommodations. For instance, a participant may be invited to review voluminous files of documents related to a particular matter. It may be that only a tiny subset of those documents is eventually introduced at hearing or relied on by witnesses in the proceeding. Exhibits introduced at hearings are also not filed by the participants, but are instead submitted to the court reporter for introduction into the record. Participants at Commission hearings currently rely on paper copies of filed documents, and on paper copies of discovery request, discovery responses, and trial exhibits. (15) How should the discovery process be modified, if at all, to accommodate electronic filing? (16) How should trial exhibits be introduced into the record to accommodate electronic filing? (17) How should trials be conducted if pleadings, testimony, and exhibits have been filed and served electronically?

G. Oaths, Attestations, and Notarization

Certain filings require verification under oath, attestations, or notarization. For example, under Parts 34 of the

[8] The Appendix to this order contains a compendium of the questions contained in the body of the order.

[9] 18 CFR 385.2005 (1997).

Commission's regulations and the Federal Power Act, an application for authority to issue securities requires that the application be signed by an authorized representative and be verified under oath. (18) To the extent such verification is only required by the Commission's regulations and not be statute, are these requirement important enough to be retained? (19) How should the Commission accommodate filings which require verification under oath, attestations, and notarization?

H. Security, Integrity, and Authentication

The security, integrity, and authentication of electronic filings is a significant concern. (20) Should the Commission consider any special authentication or security measures, such as encryption, digital signatures, logon ID's, and passwords? (21) Are special measures only needed for certain documents (please specify)? (22) What steps should the Commission take to detect security breaches in filings? (23) How should the security breaches be handled?

I. Automatic Acknowledgment

The Commission intends to implement an automatic acknowledgment mechanism. (24) How should the Commission provide automatic acknowledgment? (25) Should the receipt be sent to the web browser or by E-Mail? (26) How should the Commission notify the filer of the docket number of an electronic filing in a new proceeding? (27) Would posting the docket number on the Commission's Internet site be sufficient?

J. Service

The Commission's regulations currently do not prevent parties from agreeing to electronic service.[10] The Commission intends to clarify its rules to better facilitate electronic service. Additionally, the Commission presently provides paper copies of its issuances to all parties in a proceeding. It intends to provide electronic service for its issuances in the future. (28) Should the Commission encourage electronic service between parties over the Internet? (29) Should the Commission facilitate electronic service by posting documents on its Internet site or should the party making the filing make it available on its own Internet site? (30) Is it adequate for the Commission to serve notice to the parties in a proceeding that it has issued an order or should it disseminate the order directly to the parties electronically?

[10] *See* 18 CFR 385.2010(f)(2).

IV. Public Comment Procedures

The Commission invites interested persons to submit comments, data views, and other information concerning the matters set out above.

To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position on the issues raised. Commenters are requested to identify the specific question posed that their discussion addresses and to use appropriate headings. Additionally, commenters should double space their comments.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., June 30, 1998. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426 and should refer to Docket No. PL98–1–000.

Additionally, comments should be submitted electronically. Commenters are encouraged to file comments using Internet E-Mail.

Comments should be submitted through the Internet by E-Mail to comment.rm@ferc.fed.us in the following format: on the subject line, specify Docket No. PL98–1–000; in the body of the E-Mail message, specify the name of the filing entity and the name, telephone number, and E-Mail address of a contact person; and attach the comment in WordPerfect 6.1 or lower format or in ASCII format as an attachment to the E-Mail message. The Commission will send a reply to the E-Mail to acknowledge receipt. Questions or comments on electronic filing using Internet E-Mail should be directed to Brooks Carter at 202 501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters also can submit comments on computer diskette in WordPerfect 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. PL98–1–000 on the outside of the diskette.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE., Washington, DC 20426, during regular business hours. Additionally, comments can be viewed and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

By direction of the Commission.

Linwood A Watson, Jr.,

Acting Secretary.

Appendix—Index of Questions

For the ease of those submitting comments, the following is a compendium of the questions contained in body of this order:

Filing formats

(1) What format(s) should the Commission consider for its different types of filings (please specify)?

(2) What are the pros and cons of each format and what should the Commission and/or filer do to remedy the cons?

(3) Are there certain filings for which the Commission can implement electronic filing relatively easily in the near future (please specify)?

(4) What types of filings will require more time and effort to implement electronic filing (please specify)?

(5) How do you think the Commission should proceed in selecting which format(s) to use for which filings?

Citations

(6) What citation format should the Commission establish for electronic filings and issued documents?

Signatures

(7) Is the signature requirement important enough to be retained?

(8) If the Commission does not require signatures, how would the filing party verify that the contents of the filing are true?

(9) If only certain filings need to be signed, should the Commission establish electronic signature requirements for those specific filings (please specify)?

Privileged Material

(10) How should privileged documents be handled?

(11 How should documents be filed that are only partially privileged?

Methods of Electronic Filing

(12) Which method(s) should the Commission use for electronic filing: (i) the approaches discussed above; (ii) computer-to-computer using a leased line/private network; (iii) uploading to the Commission's electronic bulletin board; or (iv) some other method (please specify)?

(13) Should the Commission consider different methods for different types of filings (please specify)?

(14) How should the Commission handle large filings?

The Hearing Process

(15) How should the discovery process be modified, if at all, to accommodate electronic filing?

(16) How should trial exhibits be introduced into the record to accommodate electronic filing?

(17) How should trials be conducted if pleadings, testimony, and exhibits have been filed and served electronically?

Oaths, Attestations, and Notarization

(18) To the extent such verification is only required by the Commission's regulations

and not be statute, are these requirements important enough to be retained?

(19) How should the Commission accommodate filings which require verification under oath, attestations, and notarization?

Security, Integrity, and Authentication

(20) Should the Commission consider any special authentication or security measures, such as encryption, digital signatures, logon ID's and passwords?

(21) Are special measures only needed for certain documents (please specify)?

(22) What steps should the Commission take to detect security breaches in filings?

(23) How should the security breaches be handled?

Automatic Acknowledgment

(24) How should the Commission provide automatic acknowledgment?

(25) Should the receipt be sent to the web browser or by E-Mail?

(26) How should the Commission notify the filer of the docket number of an electronic filing in a new proceeding?

(27) Would posting the docket number on the Commission's Internet site be sufficient?

Service

(28) Should the Commission encourage electronic service between parties over the Internet?

(29) Should the Commission facilitate electronic service by posting documents on its Internet site or should the party making the filing make it available on its own Internet site?

(3) Is it adequate for the Commission to serve notice to the parties in a proceeding that it has issued an order, or should it disseminate the order directly to the parties electronically?

[FR Doc. 98–13294 Filed 5–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR PART 123

RIN 1515–AB88

Foreign-Based Commercial Motor Vehicles in International Traffic

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Customs Regulations to allow certain foreign-based commercial motor vehicles, which are admitted as instruments of international traffic, to engage in the transportation of merchandise between points in the United States where such transportation is incidental to the immediately prior or subsequent engagement of such vehicles in international traffic. Any movement of these vehicles in the general direction of an export move or as part of the return movement of the vehicles to their base country shall be considered incidental to the international movement. The benefit of this liberalization of current cabotage restrictions inures in particular to both the United States and foreign trucking industries inasmuch as it allows more efficient and economical utilization of their respective vehicles both internationally and domestically.

DATE: Comments must be received on or before July 20, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Glen E. Vereb, Office of Regulations and Rulings, 202–927–2320.

Operational aspects: Eileen A. Kastava, Office of Field Operations, 202–927–0983.

SUPPLEMENTARY INFORMATION:

Background

Section 141.4(a), Customs Regulations (19 CFR 141.4(a)), provides that entry as required by 19 U.S.C. 1484(a) shall be made of all merchandise imported into the United States unless specifically excepted. Foreign-based commercial motor vehicles are not among those excepted items listed in § 141.4(b) and would therefore be subject to entry and payment of any applicable duty unless otherwise exempted by law or regulations.

Pursuant to 19 U.S.C. 1322, vehicles and other instruments of international traffic shall be excepted from the application of the Customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.

This statutory mandate pertaining to foreign-based commercial motor vehicles is implemented under § 123.14 of the Customs Regulations (19 CFR 123.14). Section 123.14(a) states that to qualify as instruments of international traffic, such vehicles having their principal base of operations in a foreign country must be arriving in the United States with merchandise destined for points in the United States, or arriving empty or loaded for the purpose of taking merchandise out of the United States.

Section 123.14(c), Customs Regulations, states that with one exception, a foreign-based commercial motor vehicle, admitted as an instrument of international traffic under § 123.14(a), shall not engage in local traffic in the United States. The exception, set out in § 123.14(c)(1), states that such a vehicle, while in use on a regularly scheduled trip, may be used in local traffic that is directly incidental to the international schedule.

Section 123.14(c)(2), Customs Regulations, provides that a foreign-based truck trailer admitted as an instrument of international traffic may carry merchandise between points in the United States on the return trip as provided in § 123.12(a)(2) which allows use for such transportation as is reasonably incidental to its economical and prompt departure for a foreign country.

In regard to these cabotage restrictions, Customs has received a petition from the American Trucking Association (ATA) requesting a change in Customs interpretation of its regulations governing the use of foreign-based trucks in local traffic in the United States. This petition is the culmination of joint discussions beginning in July of 1994 between the ATA and the Canadian Trucking Association (CTA) to obtain mutually agreed upon parameters with respect to the liberalization of current truck cabotage restrictions in their respective countries. The proposed amendments would, however, be universally applicable.

By way of additional background, reference is hereby made to a notice published in the Customs Bulletin pursuant to 19 U.S.C. 1625(c)(1) (see 31 Cust. Bull. and Dec. No. 40, 7 (October 1, 1997)), which revised the interpretation of when a foreign-based truck would be considered as used in international traffic under existing § 123.14. However, the proposal provided for herein regarding the use of a foreign-based commercial motor vehicle, including a truck, in permissible local traffic under § 123.14(c) was, of course, not addressed in the Customs Bulletin notice. To effect this change requires an amendment under the Administrative Procedure Act, 5 U.S.C. 553.

Accordingly, Customs has determined to propose such an amendment of § 123.14(c), which would allow certain foreign-based commercial motor vehicles, admitted as instruments of international traffic, to engage in the transportation of merchandise between points in the United States where such local traffic is incidental to the immediately prior or subsequent engagement of such vehicles in international traffic. In addition, this

revision would eliminate the current requirement that such international traffic be regularly scheduled. Furthermore, any movement of these vehicles in the general direction of an export move or as part of the return movement of the vehicles to their base country shall be considered incidental to the international movement.

In conjunction with the proposed amendments to § 123.14, this document also includes proposed conforming amendments to § 123.16 regarding the return of the qualifying vehicles to the United States.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

The proposed rule would greatly relax current cabotage restrictions for both the U.S. and foreign trucking industries, enabling more efficient and economical use of their respective vehicles both internationally and domestically. As such, under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Nor would the proposed rule result in a ''significant regulatory action'' under E.O. 12866.

List of Subjects in 19 CFR Part 123

Administrative practice and procedure, Canada, Common carriers, Customs duties and inspection, Imports, International traffic, Motor carriers, Railroads, Trade agreements, Vehicles.

Proposed Amendments to the Regulations

It is proposed to amend part 123, Customs Regulations (19 CFR part 123), as set forth below.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123, and the relevant sectional authority citation, would continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS), 1431, 1433, 1436, 1448, 1624.

* * * * *

Sections 123.13—123.18 also issued under 19 U.S.C. 1322;

* * * * *

2. It is proposed to amend § 123.14 by revising paragraph (c)(1) to read as follows:

§ 123.14 Entry of foreign-based trucks, busses and taxicabs in international traffic.

* * * * *

(c) * * *

(1) The vehicle may carry merchandise or passengers between points in the United States if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Any such carriage by the vehicle in the general direction of an export move or as part of the return of the vehicle to its base country shall be considered incidental to its engagement in international traffic.

* * * * *

3. It is proposed to amend § 123.16 by revising paragraph (b) to read as follows:

§ 123.16 Entry of returning trucks, busses, or taxicabs in international traffic.

* * * * *

(b) *Use in local traffic.* Trucks, busses, and taxicabs in use in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of their use in international traffic, shall be considered to have been exported and must be regularly entered on return.

Approved: March 31, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–13217 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209322–82]

RIN 1545–AU99

Return of Partnership Income; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to partnership returns.

DATES: The public hearing originally scheduled for Tuesday, May 19, 1998, beginning at 10:00 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6031 and 6063 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Monday, January 26, 1998 (63 FR 3677), announced that the public hearing would be held on Tuesday, May 19, 1998, beginning at 10:00 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Tuesday, May 19, 1998, is cancelled.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–13221 Filed 5–18–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ15

Board of Veterans' Appeals: Rules of Practice—Revision of Decisions on Grounds of Clear and Unmistakable Error

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Rules of Practice of the Board of Veterans' Appeals (Board) to implement the provisions of section 1(b) of Pub. L.

105–111 (Nov. 21, 1997), which permits challenges to Board decisions on the grounds of ''clear and unmistakable error'' (CUE). The amendments would provide specific application procedures; establish decision standards based on case law; and eliminate as duplicative the Board Chairman's discretionary review under ''reconsideration'' on the basis of obvious error. These changes are necessary to implement the new statutory provisions, which permit a claimant to demand review by the Board to determine whether CUE exists in an appellate decision previously issued by the Board, with a right of review of such determinations by the U.S. Court of Veterans Appeals.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AJ15.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Chief Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. There are currently 60 Board members, who decide 35,000 to 40,000 such appeals per year.

This document proposes to amend the Board's Rules of Practice to implement the provisions of section 1(b) of Pub. L. 105–111 (Nov. 21, 1997), which permits a claimant to demand review by the Board to determine whether ''clear and unmistakable error'' (CUE) exists in an appellate decision previously issued by the Board, with a right of review of such determinations by the U.S. Court of Veterans Appeals.

The VA Appeals Process in General

The Secretary of Veterans Affairs decides all questions of law and fact necessary to a decision under a law that affects the provision of benefits by the Secretary to veterans, or the dependents or survivors of veterans. 38 U.S.C. 511(a). The Secretary has delegated most of these decisions to ''agencies of original jurisdiction'' (AOJs), typically the 58 regional offices (ROs) maintained by the Department of Veterans Affairs (VA). See 38 CFR 2.6(b) (delegation to Under Secretary for Benefits).

Decisions under 38 U.S.C. 511(a) are subject to one review on appeal to the Secretary. 38 U.S.C. 7104(a). Final decisions on those appeals are made by the Board. *Id.* A decision by an AOJ that is not appealed within one year becomes final, and can be reopened only with ''new and material evidence.'' 38 U.S.C. 5108, 7105(c).

The appeals process begins when a claimant files a ''notice of disagreement,'' which must be filed within one year of the decision. 38 U.S.C. 7105 (a) and (b). The VA office that made the decision reviews the claim and, if benefits are not granted, provides the claimant with a ''statement of the case.'' *Id.* 7105(d)(1). The claimant then must file a formal appeal with the Board. *Id.* 7105(d)(3). The Board decides appeals on the entire record in the case. *Id.* 7104(a). The Board may make a final decision—allowing or denying the appeal—or may remand the matter to the AOJ for development of additional factual material. 38 CFR 19.9.

If an appellant does not agree with the Board's final decision, and the notice of disagreement in the case was filed on or after November 18, 1988, the appellant has 120 days to appeal the Board's decision to the U.S. Court of Veterans Appeals. 38 U.S.C. 7266(a); Pub. L. 100–687, Div. A, § 402, reprinted at 38 U.S.C. 7251 note. (As enacted, the Veterans' Judicial Review Act, which established the Court of Veterans Appeals, permitted judicial review of Board decisions only in cases in which a notice of disagreement was filed on or after the effective date of the Act, i.e., November 18, 1988.)

Other Remedies

Once a VA decision has become final—whether by completion or abandonment of the appeals process described above—there are, generally, three ways to revive the claim.

First, if a claimant submits new and material evidence, VA will reopen and reconsider the claim. 38 U.S.C. 5108. Such claims are subject to the full range of appellate procedures described above.

Second, if a claim decision is final because there was never a formal appeal filed with the Board, and the determination was made by an RO, a claimant may allege that the decision was the result of CUE. 38 CFR 3.105(a). Such claims are subject to the full range of appellate procedures described above. *Russell* v. *Principi,* 3 Vet. App. 310 (1992). However, prior to enactment of Pub. L. 105–111, a final unappealed RO decision that is subsequently reopened with new and material evidence and adjudicated on the merits by the Board could not later be the subject of a claim of CUE. *Donovan* v. *Gober,* 10 Vet. App. 404 (1997).

Finally, if there has been a final Board decision on a claim, an appellant may request that the Chairman of the Board order ''reconsideration'' under 38 U.S.C. 7103. If the Chairman orders reconsideration, the prior decision is vacated, and a panel of Board members makes a new decision based on the entire record. The panel decision is subject to appeal to the Court of Veterans Appeals only if the notice of disagreement filed in connection with the original matter was filed on or after November 18, 1988. The Chairman's decision not to grant reconsideration is not subject to appeal independently of the underlying Board decision. *Mayer* v. *Brown,* 37 F.3d 618, 620 & n.3 (Fed. Cir. 1994) (holding that there was no jurisdiction to review the Chairman's denial of a motion for reconsideration absent jurisdiction over the underlying Board decision, but reserving judgment on the issue of whether the Chairman's decision can ever be subject to judicial review).

Board decisions are not subject to a CUE challenge under 38 CFR 3.105(a). *Smith (William)* v. *Brown,* 35 F.3d 1516, 1521 (Fed. Cir. 1994). Further, unappealed RO decisions can be ''subsumed'' in subsequent Board decisions, so that the RO decisions are no longer subject to the review otherwise available under 38 CFR 3.105(a). *Donovan* v. *Gober,* 10 Vet. App. 404 (1997).

''Clear and Unmistakable Error''

The term ''clear and unmistakable error'' originated in veterans regulations some 70 years ago, *see generally Smith (William)* v. *Brown, 35 F.3d 1516, 1524–25 (Fed. Cir. 1994), and is now incorporated in VA regulations governing VA RO determinations. 38 CFR 3.105(a). The term has been interpreted by the Court of Veterans Appeals over the past several years.*

CUE is a very specific and rare kind of error. *Fugo* v. *Brown,* 6 Vet. App. 40, 43 (1993). It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. *Fugo,* 6 Vet. App. at 43.

A determination that there was CUE must be based on the record and the law

that existed at the time of the prior decision. *Russell* v. *Principi,* 3 Vet. App. 310, 314 (1992). Either the correct facts, as they were known at the time, were not before the adjudicator or the statutory or regulatory provisions extant at the time were incorrectly applied. *Russell,* 3 Vet. App at 313. With respect to Board decisions issued on or after July 21, 1992, the Court of Veterans Appeals has held that documents which were actually in VA's possession—even though not physically before the adjudicator—are constructively a part of the record. *Bell* v. *Derwinski,* 2 Vet. App. 611 (1992); *Damrel* v. *Brown,* 6 Vet. App. 242, 245–46 (1994).

In order for there to be a valid claim of CUE, there must have been an error in the prior adjudication of the appeal which, had it not been made, would have manifestly changed the outcome at the time it was made. *Russell,* 3 Vet. App. at 313. Thus, even where the premise of error is accepted, if it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable. *Fugo,* 6 Vet. App. at 43–44.

A new medical diagnosis that ''corrects'' an earlier diagnosis ruled on by previous adjudicators is the kind of ''error'' that could not be considered an error in the original adjudication. *Russell,* 3 Vet. App. at 314. A claim of CUE that asserts no more than a disagreement as to how the facts were weighed or evaluated is insufficient. *Russell,* 3 Vet. App. at 313. Mere allegations of failure to follow regulations or failure to give due process, or any other general, non-specific claims of error, are insufficient to raise a claim of CUE. *Fugo,* 6 Vet. App. at 44. An allegation that the Secretary did not fulfill the duty to assist is insufficient to raise the issue of CUE. *E.g., Crippen* v. *Brown,* 9 Vet. App. 412, 418 (1996).

Once there is a final decision on the issue of CUE because the RO decision was not timely appealed, or because a Board decision not to revise or amend the original RO decision was not appealed, or because the Court of Veterans Appeals has rendered a decision on the issue in that particular case, that particular claim of CUE may not be raised again. *Russell,* 3 Vet. App. at 315.

The ''benefit of the doubt'' rule of 38 U.S.C. 5107(b) does not apply to determinations as to whether there was CUE. *Russell,* 3 Vet. App. at 314.

''Two Tracks'' for CUE Claims

The Court of Veterans Appeals has held that it has jurisdiction to review claims of CUE with respect to RO determinations based on the regulatory right assigned in 38 CFR 3.105(a). *Russell* v. *Principi,* 3 Vet. App. 310 (1992).

However, the CUE challenge available under 38 CFR 3.105(a) does not apply to Board decisions. *Smith (William)* v. *Brown,* 35 F.3d 1516, 1521 (Fed. Cir. 1994); *Wright* v. *Brown,* 9 Vet. App. 300, 303–04 (1996). Because an RO decision appealed to the Board is ''subsumed'' in a Board decision on the merits, such an RO decision would no longer be subject to a CUE challenge. *Donovan* v. *Gober,* 10 Vet. App. 404 (1997). The Court has held that even unappealed RO decisions are ''subsumed''—and thus not subject to CUE challenges—if such claims are later reopened and decided on the merits by the Board. *Chisem* v. *Gober,* 10 Vet. App. 526 (1997).

The Effect of the Legislation

Section 1(b) of Pub. L. 105–111 changed existing law by providing that a decision by the Board is subject to revision on the grounds of CUE. The statute provides that such review may be instituted by the Board on the Board's own motion or upon request of the claimant, and that such a request may be made at any time after the Board decision is made. The Board is to decide all such requests on the merits, without referral to any adjudicative or hearing official acting on behalf of the Secretary.

The statute also provides that, notwithstanding the notice of disagreement requirements for judicial review (described earlier in this document), judicial review is available with respect to any Board decision on a claim alleging that a previous determination of the Board was the product of CUE if that claim is filed after, or was pending before VA, the Court of Veterans Appeals, the Court of Appeals for the Federal Circuit, or the Supreme Court on the date of the enactment of the Act (November 21, 1997).

The legislative history of H.R. 1090, 105th Congress, which became Pub. L. 105–111, indicates that the Congress expected the Department would implement section 1(b) of the bill in accordance with current definitions of CUE. H.R. Rep. No. 52, 105th Cong., 1st Sess. 3 (1997) (report of House Committee on Veterans' Affairs on H.R. 1090) (''Given the Court's clear guidance on this issue [of CUE], it would seem that the Board could adopt procedural rules consistent with this guidance to make consideration of appeals raising clear and unmistakable error less burdensome''); 143 Cong. Rec. 1567, 1568 (daily ed. Apr. 16, 1997) (remarks of Rep. Evans, sponsor of H.R. 1090, in connection with House passage) (''The bill does not alter the standard for evaluation of claims of clear and unmistakable error'').

Implementing Regulations

The proposed regulations restate statutory provisions, restate legal standards reflecting court decisions, and establish procedures for requesting revision of a Board decision.

The proposed regulations would also eliminate the use of the Board's reconsideration process for challenges based on ''obvious error,'' 38 CFR 20.1000(a), while continuing that process based on (1) the discovery of new and material evidence in the form of relevant records or reports of the service department concerned, or (2) an allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant. Since the ''obvious error of fact or law'' standard of current 38 CFR 20.1000(a) is the same standard as that of CUE, *Smith (William)* v. *Brown,* 35 F.3d 1516, 1526 (Fed. Cir. 1994), and since the new remedy under Pub. L. 105–111 provides for a Board decision and judicial review, there is no longer any need—particularly in light of the Board's limited resources—for what is a duplicative remedy.

Accordingly, the proposed regulations would amend 38 CFR 20.1000, relating to motions for reconsideration, by deleting paragraph (a), which provides that obvious error of fact or law is a basis for reconsideration. The proposed regulations would also amend 38 CFR 20.1001(a), relating to filing motions for reconsideration, to eliminate a reference to allegations of obvious errors of fact or law.

The proposed regulations would create a new subpart O in part 20 of title 38, Code of Federal Regulations, devoted specifically to revision of Board decisions on grounds of CUE.

Proposed Rule 1400 (38 CFR 20.1400) would begin the review process with a motion, either by a party to the decision being challenged or by the Board. In addition, because it would be inappropriate for an inferior tribunal to review the actions of a superior, *Smith (William)* v. *Brown,* 35 F.3d 1516, 1526 (Fed. Cir. 1994); *Duran* v. *Brown,* 7 Vet. App. 216, 224 (1994), the rule would provide that a Board decision on an issue decided by a court of competent jurisdiction on appeal is not subject to revision on the grounds of clear and unmistakable error.

Proposed Rule 1401 (38 CFR 20.1401) would define the terms ''issue'' and

''party'' for purposes of the proposed subpart. Generally, the term ''issue'' would be defined as a matter upon which the Board made a final decision (other than a decision under the proposed subpart) which was appealable under Chapter 72 of title 38, United States Code, or which would have been appealable if the Notice of Disagreement with respect to such matter had been received by the agency of original jurisdiction on or after November 18, 1988. The purposes of this definition are to clarify (1) that only final, outcome-determinative decisions of the Board are subject to revision on the grounds of CUE, so as to avoid, in the interests of judicial economy, atomization of Board decisions into myriad component parts; and (2) the scope of the finality referred to in proposed Rule 1409(c) (38 CFR 20.1409(c)), discussed later in this document. For example, since a Board remand is in the nature of a preliminary order and does not constitute a final Board decision, *Zevalkink* v. *Brown*, 6 Vet. App. 483, 488 (1994), *aff'd*, 102 F.3d 1236 (Fed. Cir. 1996), cert. denied, 117 S. Ct. 2478 (1997); 38 CFR 20.1100(b), it is not appealable under Chapter 72 of title 38, United States Code, and would not be subject to revision on the grounds of CUE. Similarly, since the jurisdiction of the Court of Veterans Appeals is limited to ''decisions'' of the Board, 38 U.S.C. 7252(a), individual findings of fact or conclusions of law, 38 U.S.C. 7104(d)(1), would not be subject to revision on the grounds of CUE except as part of such revision of the decision they support. At the same time, as discussed in connection with proposed Rule 1409 later in this document, once there is a final decision on a motion under this proposed subpart, the prior Board decision on the underlying ''issue'' would no longer be subject to revision on grounds of CUE.

Proposed Rule 1401 would also define ''party'' as any party to the Board proceeding that resulted in the final Board decision which is the subject of a motion under the proposed subpart. Because 38 U.S.C. 7111(c), as added by Pub. L. 105–111, limits the right to initiate CUE review to the Board and to claimants, the term would not include officials authorized to file administrative appeals pursuant to § 19.51 of this title.

Proposed Rule 1402 (38 CFR 20.1402) would clarify that motions under proposed subpart O are not appeals and, accordingly, not subject to the provisions of parts 19 and 20 of Chapter I, Title 38, Code of Federal Regulations, to the extent those provisions relate to the processing and disposition of appeals.

Proposed Rule 1403 (38 CFR 20.1403) would set forth the standards for what constitutes CUE, as well as the record to be reviewed. The various standards and the specific examples of situations that are not CUE are drawn directly from court opinions cited earlier in this document under the heading ''Clear and Unmistakable Error.'' In addition, the rule would provide that CUE does not include the otherwise correct application of a statute or regulation where, subsequent to the Board decision challenged, there has been a change in the interpretation of the statute or regulation. This latter provision is borrowed in part from 38 CFR 3.105, discussed earlier in this document, relating to CUE in RO decisions. An interpretation of a statute or regulation could, in light of future interpretations—whether by the General Counsel or a court—be viewed as erroneous. That would not, however, be the kind of error required for CUE, i.e., an error about which reasonable persons could not differ. See VAOPGCPREC 25–95, 61 FR 10,063, 10,065 (1996) (holding that the Board's application of a subsequently invalidated regulation in a decision does not constitute obvious error or provide a basis for reconsideration of the decision).

Proposed Rule 1404 (38 CFR 20.1404) would establish filing and pleading requirements for motions for revision of a Board decision based on CUE. The rule would require specific pleading of the error, and provide that motions which fail to do so would be denied, although motions that merely fail to identify the claimant, the Board decision challenged, or the issue(s) being challenged, or which are unsigned, would be dismissed without prejudice to a proper filing. The proposed rule would also provide that a request transmitted to the Board by the Secretary pursuant to 38 U.S.C. 7111(f) (generally relating to claims for CUE filed with the Secretary) would be treated as a motion filed under this rule.

Proposed Rule 1405 (38 CFR 20.1405) would provide that motions to revise Board decisions on the grounds of CUE would be docketed in the order received and be assigned in accordance with the appellate assignment procedures in 38 CFR 19.3. The proposed rule, following the current standards applicable to reconsideration decisions, would prohibit assignment of the motion to any Board member who participated in the decision which is the subject of the motion. 38 U.S.C. 7103(b)(2); 38 CFR 19.11(c). Since a CUE determination must be made on the facts before the Board at the time the original decision was made, the rule would also provide that no new evidence would be considered in connection with the motion (although material included on the basis of proposed Rule 1403(b)(2), discussed above, would not be considered new evidence) and that the Board may, for good cause shown, grant a request for a hearing for the purpose of argument only. Nevertheless, the proposed rule would permit the Board, subject to the limitation on new evidence, to use the various AOJs to ensure completeness of the record. The Board would also be permitted to seek the opinion of the General Counsel, with notice to the party to the decision and an opportunity to respond. In accordance with the specific requirements of the new statute, the rule would prohibit referral of the motion to the AOJ or any hearing officer acting on behalf of the Secretary for the purpose of making a decision. Finally, in order to facilitate judicial review, the rule would require decisions on these motions to include separately stated findings of fact and conclusions of law, and the reasons and bases for those findings and conclusions. Cf. 38 U.S.C. 7104(d); 38 CFR 19.7(b) (''reasons and bases'' requirement for appellate decisions).

Proposed Rule 1406 (38 CFR 20.1406), following the new statute, would provide that a decision of the Board that revises a prior Board decision on the grounds of CUE has the same effect as if the decision had been made on the date of the prior decision. The proposed rule would also provide that decisions that discontinue or reduce benefits would be subject to the laws and regulations governing such discontinuances or reductions based solely on administrative error or errors in judgment. See generally 38 U.S.C. 5112(b)(10) (reduction or discontinuance on such bases effective on the date of last payment).

Proposed Rule 1407 (38 CFR 20.1407) would provide special procedural rules in those cases where the Board, on its own motion, reviews a prior decision on the grounds of CUE. The rule would provide for notification to the party to the prior Board decision and that party's representative, with a period of 60 days to file a brief or argument. Nevertheless, failure of a party to so respond would not affect the finality of the Board's decision on the motion.

Proposed Rule 1408 (38 CFR 20.1408) would provide special rules in the case of challenges to Board decisions in simultaneously contested claims. See 38 U.S.C. 7105A. Generally, the rule would require notice to all parties to such

Board decisions, with limited time for non-moving parties to respond.

Proposed Rule 1409 (38 CFR 20.1409), in accordance with the discussion under ''Clear and Unmistakable Error'' earlier in this document, would provide that, once there is a final decision on a motion under the proposed subpart—whether initiated by a party or by the Board—with respect to a particular issue, the prior Board decision on that issue would no longer be subject to revision on the grounds of CUE and that subsequent motions on such decisions would be dismissed with prejudice. For example, if a party challenged a decision on service connection for failing to apply the proper diagnostic code in the Schedule for Rating Disabilities, 38 CFR part 4, and the Board denied the motion, a subsequent motion which alleged that the Board failed to apply the presumption of sound condition at the time of entry into service, 38 U.S.C. 1111, would be dismissed with prejudice. It would be clearly important that a moving party carefully determine all possible bases for CUE before he or she files a motion under the proposed subpart. Since the effect of a successful challenge is the same no matter when the motion is filed, i.e., the revision has the same effect as if the decision had been made on the date of the earlier decision, there is no particular filing date that must be observed in order to maximize potential benefits. At the same time, because, as the court has observed, CUE is a ''very specific and rare kind of error,'' *Fugo* v. *Brown,* 6 Vet. App. 40, 43 (1993), and because the availability of a CUE challenge does not mean that the issue may be ''endlessly reviewed,'' *Russell* v. *Principi,* 3 Vet. App. 310, 315 (1992) (en banc), we believe that one challenge per decision on an issue is justified not only as a proper statement of the law, but also as a rule serving the interests of judicial economy. The rule would also clarify that a dismissal without prejudice under proposed Rule 1404(a) or a referral to ensure completeness of the record under proposed Rule 1405(e) would not be a final decision of the Board.

Proposed Rule 1410 (38 CFR 20.1410) would provide that, if a Board decision is appealed to a court of competent jurisdiction, the Board will stay any consideration of a motion under this subpart with respect to that Board decision. Generally, once a case has been certified for appeal to the court on a particular issue, the Board no longer has jurisdiction. *Cerullo* v. *Derwinski,* 1 Vet. App. 195 (1991). Processing of the motion under proposed subpart O would continue upon conclusion of the court appeal or an appropriate order from the court.

Proposed Rule 1411 (38 CFR 20.1411) would set forth the relationship between motions under proposed subpart O and certain other statutes. First, in accordance with the discussion under ''Clear and Unmistakable Error'' earlier in this document, the rule would provide that the ''benefit of the doubt'' rule of 38 U.S.C. 5107(b) would not apply to determinations as to whether there was CUE. Second, because review under this proposed subpart is limited to the evidence of record at the time of the Board decision challenge, and because a motion under this subpart would be a collateral challenge to a Board decision rather than a ''claim'' for benefits, *cf. Duran* v. *Brown,* 7 Vet. App. 216, 223–24 (1994) (claim of CUE is a collateral attack on a prior final VA decision), the rule would also provide that a motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (relating to reopening claims on the grounds of new and material evidence). Third, because a motion under proposed subpart O is a statutory challenge to an otherwise final Board decision rather than an ''application for benefits,'' the rule would provide that the notification requirements in 38 U.S.C. 5103(a) (relating to applications for benefits) would not apply to such motions. Finally, because a motion would not be a claim for benefits, and because the notion of a ''well-grounded claim'' would be irrelevant to a motion under proposed subpart O, the rule would provide that the ''duty to assist'' requirements in 38 U.S.C. 5107(a) (relating to VA's duty following the filing of a well-grounded claim) would not apply to such motions.

Attorney Fees

The proposed regulations would also add a new paragraph (4) to Rule 609(c) (38 CFR 20.609(c), relating to payment of a representative's fees in connection with VA proceedings), which would provide that the term ''issue'' referred to in Rule 609(c) would have the same meaning as that term in proposed Rule 1401(a), discussed earlier in this document.

Generally, attorneys may charge a fee in connection with VA proceedings only if (1) there has been a final Board decision on the issue (or issues) involved; (2) the Notice of Disagreement (discussed earlier in this document) which preceded the Board decision with respect to the issue, or issues, involved was received on or after November 18, 1988; and (3) the attorney was retained within one year of the relevant Board decision. 38 U.S.C. 5904(c)(1); 38 CFR 20.609(c).

In the case of a motion under proposed subpart O, it is our view that the issue for purposes of Rule 609 is the issue associated with the Board decision which is being challenged in the motion under proposed subpart O. Accordingly, an attorney could charge a fee in connection with a motion under proposed subpart O if (1) the challenged Board decision was preceded by a notice of disagreement received by the AOJ on or after November 18, 1988, and (2) the attorney was retained not later than one year following the date of the challenged Board decision.

We note that proposed Rule 609(c)(4) would not affect the ability of an attorney to charge a fee in connection with proceedings before a court, because such charges are not subject to VA's jurisdiction.

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule would affect only the processing of claims by VA and would not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

Approved: May 11, 1998.

Togo D. West, Jr.,

Secretary.

For the reasons set out in the preamble, 38 CFR part 20 is proposed to be amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In subpart G, § 20.609, paragraph (c)(4) is added to read as follows:

§ 20.609. Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

* * * * *

(c) * * *

(4) For the purposes of this section, in the case of a motion under Subpart O of this part (relating to requests for revision of prior Board decisions on the grounds of clear and unmistakable

error), the ''issue'' referred to in this paragraph (c) shall have the same meaning as ''issue'' in Rule 1401(a) (§ 20.1401(a) of this part).

* * * * *

§ 20.1000 [Amended]

3. In subpart K, § 20.1000 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b), respectively.

§ 20.1001 [Amended]

4. In subpart K, § 20.1001(a), the second sentence is amended by removing ''alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate''.

5. A new subpart O is added to read as follows:

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

Sec.

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

§ 20.1400 Rule 1400. Motions to revise Board decisions.

(a) Review to determine whether clear and unmistakable error exists in a final Board decision may be initiated by the Board, on its own motion, or by a party to that decision (as the term ''party'' is defined in Rule 1401(b) (§ 20.1401(b) of this part) in accordance with Rule 1404 (§ 20.1404 of this part).

(b) A Board decision on an issue decided by a court of competent jurisdiction on appeal is not subject to revision on the grounds of clear and unmistakable error.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1401 Rule 1401. Definitions.

(a) *Issue.* Unless otherwise specified, the term ''issue'' in this subpart means a matter upon which the Board made a final decision (other than a decision under this subpart) which was appealable under Chapter 72 of title 38, United States Code, or which would have been so appealable if the Notice of Disagreement with respect to such matter had been received by the agency of original jurisdiction on or after November 18, 1988.

(b) *Party.* As used in this subpart, the term ''party'' means any party to the proceeding before the Board that resulted in the final Board decision which is the subject of a motion under this subpart, but does not include officials authorized to file administrative appeals pursuant to § 19.51 of this title.

(Authority: 38 U.S.C. 501(a), 7104(a))

§ 20.1402 Rule 1402. Inapplicability of other rules.

Motions filed under this subpart are not appeals and, except as otherwise provided, are not subject to the provisions of parts 19 or 20 of this chapter which relate to the processing and disposition of appeals.

§ 20.1403 Rule 1403. What constitutes clear and unmistakable error; what does not.

(a) *General.* Clear and unmistakable error is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. Generally, either the correct facts, as they were known at the time, were not before the Board, or the statutory and regulatory provisions extant at the time were incorrectly applied.

(b) *Record to be reviewed.*—(1) *General.* Review for clear and unmistakable error in a prior Board decision must be based on the record and the law that existed when that decision was made.

(2) *Special rule for Board decisions issued on or after July 21, 1992.* For a Board decision issued on or after July 21, 1992, the record that existed when that decision was made includes relevant documents possessed by the Department of Veterans Affairs not later than 90 days before such record was transferred to the Board for review in reaching that decision, provided that the documents could reasonably be expected to be part of the record.

(c) *Errors that constitute clear and unmistakable error.* To warrant revision of a Board decision on the grounds of clear and unmistakable error, there must have been an error in the Board's adjudication of the appeal which, had it not been made, would have manifestly changed the outcome when it was made. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable.

(d) *Examples of situations that are not clear and unmistakable error.*—(1) *Changed diagnosis.* A new medical diagnosis that ''corrects'' an earlier diagnosis considered in a Board decision.

(2) *Duty to assist.* The Secretary's failure to fulfill the duty to assist.

(3) *Evaluation of evidence.* A disagreement as to how the facts were weighed or evaluated.

(e) *Change in interpretation.* Clear and unmistakable error does not include the otherwise correct application of a statute or regulation where, subsequent to the Board decision challenged, there has been a change in the interpretation of the statute or regulation.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1404 Rule 1404. Filing and pleading requirements.

(a) *General.* A motion for revision of a decision based on clear and unmistakable error must be in writing, and must be signed by the moving party or that party's representative. The motion must include the name of the veteran; the name of the moving party if other than the veteran; the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision to which the motion relates. If the applicable decision involved more than one issue on appeal, the motion must identify the specific issue, or issues, to which the motion pertains. Motions which fail to comply with the requirements set forth in this paragraph shall be dismissed without prejudice to refiling under this subpart.

(b) *Specific allegations required.* The motion must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the Board decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence. Motions which fail to comply with the requirements set forth in this paragraph shall be denied.

(c) *Filing.* A motion for revision of a decision based on clear and unmistakable error may be filed at any time. Such motions should be filed at the following address: Director, Administrative Service (014), Board of

Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(d) *Requests not filed at the Board.* A request for revision transmitted to the Board by the Secretary pursuant to 38 U.S.C. 7111(f) (relating to requests for revision filed with the Secretary other than at the Board) shall be treated as if a motion had been filed pursuant to paragraph (d) of this section.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1405 Rule 1405. Disposition.

(a) *Docketing and assignment.* Motions under this subpart will be docketed in the order received and will be assigned in accordance with § 19.3 of this part (relating to assignment of proceedings). Where an appeal is pending on the same underlying issue at the time the motion is received, the motion and the appeal may be consolidated under the same docket number and disposed of as part of the same proceeding. A motion may not be assigned to any Member who participated in the decision that is the subject of the motion. If a motion is assigned to a panel, the decision will be by a majority vote of the panel Members.

(b) *Evidence.* No new evidence will be considered in connection with the disposition of the motion. Material included in the record on the basis of Rule 1403(b)(2) (§ 20.1403(b)(2) of this part) is not considered new evidence.

(c) *Hearing.*—(1) *Availability.* The Board may, for good cause shown, grant a request for a hearing for the purpose of argument. No testimony or other evidence will be admitted in connection with such a hearing. The determination as to whether good cause has been shown shall be made by the member or panel to whom the motion is assigned.

(2) *Submission of requests.* Requests for such a hearing shall be submitted to the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.

(d) *Decision to be by the Board.* The decision on a motion under this subpart shall be made by the Board. There shall be no referral of the matter to any adjudicative or hearing official acting on behalf of the Secretary for the purpose of deciding the motion.

(e) *Referral to ensure completeness of the record.* Subject to the provisions of paragraph (b) of this section, the Board may use the various agencies of original jurisdiction to ensure completeness of the record in connection with a motion under this subpart.

(f) *General Counsel opinions.* The Board may secure opinions of the General Counsel in connection with a motion under this subpart. In such cases, the Board will notify the party and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the party's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the party if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(g) *Decision.* The decision of the Board on a motion will be in writing. The decision will include separately stated findings of fact and conclusions of law on all material questions of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the motion.

(Authority: 38 U.S.C. 501(a), 7104(d), 7111)

§ 20.1406 Rule 1406. Effect of revision

A decision of the Board that revises a prior Board decision on the grounds of clear and unmistakable error has the same effect as if the decision had been made on the date of the prior decision. Revision of a prior Board decision under this subpart that results in the discontinuance or reduction of benefits is subject to laws and regulations governing the reduction or discontinuance of benefits by reason of erroneous award based solely on administrative error or errors in judgment.

(Authority: 38 U.S.C. 7111(b)

§ 20.1407 Rule 1407. Motions by the Board

If the Board undertakes, on its own motion, a review pursuant to this subpart, the party to that decision and that party's representative (if any) will be notified of such motion and provided an adequate summary thereof and, if applicable, outlining any proposed discontinuance or reduction in benefits that would result from revision of the Board's prior decision. They will be allowed a period of 60 days to file a brief or argument in answer. The failure of a party to so respond does not affect the finality of the Board's decision on the motion.

(Authority: 38 U.S.C. 501(a), 7111)

§ 20.1408 Rule 1408. Special rules for simultaneously contested claims.

In the case of a motion under this subpart to revise a final Board decision in a simultaneously contested claim, as that term is used in Rule 3(o) (§ 20.3(o) of this part), a copy of such motion shall, to the extent practicable, be sent to all other contesting parties. Other parties have a period of 30 days from the date of mailing of the copy of the motion to file a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy. Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 501(a))

§ 20.1409 Rule 1409. Finality and appeal.

(a) A decision on a motion filed by a party or initiated by the Board pursuant to this subpart will be stamped with the date of mailing on the face of the decision, and is final on such date. The party and his or her representative, if any, will be provided with copies of the decision.

(b) For purposes of this section, a dismissal without prejudice under Rule 1404(a) (§ 20.1404(a) of this part) or a referral under Rule 1405(e) is not a final decision of the Board.

(c) Once there is a final decision on a motion under this subpart relating to a prior Board decision on an issue, that prior Board decision on that issue is no longer subject to revision on the grounds of clear and unmistakable error. Subsequent motions relating to that prior Board decision on that issue shall be dismissed with prejudice.

(d) Chapter 72 of title 38, United States Code (relating to judicial review), applies with respect to final decisions on motions filed by a party or initiated by the Board pursuant to this subpart.

(Authority: 38 U.S.C. 501(a); Pub. L. 105–111)

§ 20.1410 Rule 1410. Stays pending court action.

The Board will stay its consideration of a motion under this subpart upon receiving notice that the Board decision that is the subject of the motion has been appealed to a court of competent jurisdiction until the appeal has been concluded or the court has issued an order permitting, or directing, the Board to proceed with the motion.

(Authority: 38 U.S.C. 501(a))

§ 20.1411 Rule 1411. Relationship to other statutes.

(a) The ''benefit of the doubt'' rule of 38 U.S.C. 5107(b) does not apply to the Board's decision, on a motion under this subpart, as to whether there was clear and unmistakable error in a prior Board decision.

(b) A motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (relating to reopening claims on the grounds of new and material evidence).

(c) A motion under this subpart is not an application for benefits subject to any duty associated with 38 U.S.C. 5103(a) (relating to applications for benefits).

(d) A motion under this subpart is not a claim for benefits subject to the requirements and duties associated with 38 U.S.C. 5107(a) (requiring ''well-grounded'' claims and imposing a duty to assist).

(Authority: 38 U.S.C. 501(a))

[FR Doc. 98–13197 Filed 5–18–98; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL169–1b; FRL–6012–8]

Approval and Promulgation of State Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the March 5, 1998, Illinois State Implementation Plan (SIP) revision request containing amendments to volatile organic material emission control rules for wood furniture coating operations in the Chicago and Metro-East ozone nonattainment areas. In the final rules section of this **Federal Register**, the EPA is approving the State's requests as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this proposed rule. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before June 18, 1998.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: April 29, 1998.

Barry C. DeGraff,

Acting Regional Administrator.

[FR Doc. 98–13298 Filed 5–18–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI67–01–7275; FRL–6014–7]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is proposing to correct the State Implementation Plan (SIP) for the State of Michigan regarding the State's emission limitations and prohibitions for air contaminant or water vapor, pursuant to section 110(k)(6) of the Clean Air Act, as amended in 1990.

In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this proposed rule within 30 days of this publication. Should the Agency receive such comment, it will publish a document informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received on or before June 18, 1998.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Victoria Hayden at (312) 886–4023 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Victoria Hayden, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886-4023.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule of the same title which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 7, 1998.

Robert Springer,

Acting Regional Administrator, Region 5.

[FR Doc. 98–13296 Filed 5–18–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[GA–37–9811b; FRL–6003–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the Section 111(d) and 129 State Plan submitted by the Georgia Department of Natural Resources (DNR) for the State of Georgia on November 13, 1997, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Waste Combustors with capacity to combust more than 250 tons per day of municipal solid waste. The Plan was submitted by the Georgia DNR to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the Georgia State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments on this proposed rule must be received in writing by June 18, 1998.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Region Office listed. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Georgia Department of Natural Resources, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Davis at (404) 562–9127 or Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 16, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–13118 Filed 5–18–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 98–872]

Proposed Revision of 1998 Collection Amounts for Schools and Libraries and Rural Health Care Universal Service Support Mechanisms

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Common Carrier Bureau seeks comment on the proposed revision of 1998 collection amounts for the schools and libraries and rural health care universal service support mechanisms.

DATES: Comments in response to this proposed rule are due May 22, 1998.

ADDRESSES: One original and five copies of all comments responsive to this Public Notice must be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Three copies also should be sent to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, 2100 M Street, N.W., 8th Floor, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Irene Flannery, Accounting Policy Division, Common Carrier Bureau, (202) 418–7383.

SUPPLEMENTARY INFORMATION: The final rules providing for universal service support for schools, libraries, and health care providers appear in 47 CFR part 54, subparts F and G, which were originally published on June 17, 1997 (62 FR 32862) and amended in rules published on January 3, 1998 (63 FR 2094) and January 27, 1998 (63 FR 3830).

By the Common Carrier Bureau:

Consistent with section 254 of the Communications Act, as amended, and the recommendations of the Federal-State Joint Board on Universal Service, we remain committed to providing support to eligible schools and libraries for telecommunications services, Internet access, and internal connections. We also remain committed to providing the greatest level of support to the most economically disadvantaged schools and libraries. At the same time, however, we strive to ensure a smooth transition to the new universal service support mechanisms and to minimize disruption to consumers. We seek to provide support to schools, libraries, and rural health care providers in a manner that does not require consumers' rates to rise, and without causing rate churn. We thus seek comment on a proposal to implement a gradual phase-in of the schools, libraries, and rural health care universal service support mechanisms that takes advantage, and reflects the timing, of access charge reductions, will provide substantial support and at the same time will minimize disruption to consumers.

As of May 1, 1998, SLC projected that $2.02 billion in discounts have been requested by applicants who have filed through April 28, 1998. RHCC projected that the rural health care support mechanism will require $25 million for the third quarter. Although the local exchange carriers will not file their access tariffs until June 16, 1998, based on preliminary information provided by the local exchange carriers, we estimate that the July 1, 1998 access charge reductions will be approximately $700 million below current levels. Given projected access charge reductions, we estimate that the quarterly collection rate for schools and libraries could rise from $325 million (the second quarter collection rate) to approximately $524 million (We reach this result in the following manner: Long distance carriers pay direct contributions to universal service and, through interstate access charges, indirectly pay for most of the local exchange carrier contributions. Directly and indirectly, long distance carriers are responsible for approximately 82.5 percent of schools and libraries and rural health care contributions. Multiplying $700 million by 1/.825 yields $848 million. We divide $848 million by 4 to find the incremental amount available for each quarter, which is $212 million. We then add $212 million to the average quarterly collection rate for the first half of 1998, $312 million (the average of $300 and 325 million). Accordingly, access charge reductions of $700 million yield $524 million as a quarterly collection rate for the third and fourth

quarters of 1998 without increasing total access and universal service payments by long distance carriers. Accordingly, schools and libraries could be funded at approximately $1.67 billion for the 1998 calendar year. Because the 75-day initial filing window period for the rural health care support mechanism just opened on May 1, 1998, we propose that the quarterly collection rate for the rural health care support mechanism remain at $25 million for the third and fourth quarters of 1998. Accordingly, rural health care providers would be funded at $100 million for the 1998 calendar year.)

We do not seek comment on revising the annual caps adopted in the Universal Service Order. Rather, we seek comment on adjusting the maximum amounts that may be collected and spent during the initial year of implementation in order to ensure that collection rates do not exceed access charge reductions and to prevent rate churn for subscribers. We emphasize that any adjustments should not impact the level of support available to the most economically disadvantaged schools and libraries, and seek comment on ways to ensure that those entities receive adequate support.

We seek comment on directing the Universal Service Administrative Company (''USAC'') to collect only as much money as is required by demand, but in no event more than $25 million per quarter for the third and fourth quarters of 1998 to support the rural health care universal service support mechanism, and no more than $524 million per quarter for the third and fourth quarters of 1998 to support the schools and libraries universal service support mechanism. We also seek comment on directing the administrative corporations to neither commit nor disburse more than $100 million for the health care support mechanism or more than $1.67 billion for the schools and libraries support mechanism during the 1998 funding year.

While we have not had an opportunity to review fully the statement of Commissioner Furchtgott-Roth, we do take this opportunity to note that the 60-day congressional review period referenced in that statement does not apply to ''any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.''

Parties wishing to comment on these issues and the Initial Regulatory Flexibility Analysis below are directed to file comments on or before May 22, 1998, and to follow the following procedures. All filings should reference: Proposed Revision of Maximum Collection Amounts for Schools and Libraries and Rural Health Care Providers, Public Notice, CC Docket No. 96–45, DA 98–872. All interested parties should include the name of the filing party and the date of the filing on each page of their comments. Parties should include a table of contents in all documents regardless of length and should indicate whether they are filing an electronic copy of a submission via the Internet or via diskette. Pleadings must comply with Commission rules. One original and five copies of all comments must be sent to Magalie Roman Salas, Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Three copies also should be sent to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, 2100 M Street, N.W., 8th Floor, Washington, D.C. 20554. Copies of documents filed with the Commission may be obtained from the International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20037, (202) 857–3800. Such documents are also available for review and copying at the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C., from 9:00 a.m. to 4:30 p.m.

Parties may also file informal comments or an exact copy of formal comments electronically via the Internet at: <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be submitted. A party must note whether an electronic submission is an exact copy of formal comments on the subject line and should note in its paper submission that an electronic copy of its comments is being submitted via the Internet. A commenter also must include its full name and Postal Service mailing address in its submission. Parties not submitting an exact copy of their formal comments via the Internet are also asked to submit their comments on diskette. Parties submitting diskettes should submit them to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, 2100 M Street, N.W., Room 8606, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment), date of submission, and the name of the electronic file on the diskette. Each diskette should contain only one party's pleadings, preferably in a single electronic file. Electronic submissions are in addition to and not a substitute for the formal filing requirements addressed above.

Ex parte contact. Filing of this petition initiates a permit-but-disclose proceeding under the Commission's rules.

Initial Regulatory Flexibility Analysis

1. The Regulatory Flexibility Act (RFA)[1] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.''[2]

2. *Description of the Reasons Why Agency Action Is Being Considered.* This Notice requests comment on adjusting the maximum amounts that may be collected and spent during the initial year of implementation of the universal service support mechanisms for schools, libraries, and rural health care providers in order to ensure that collection rates do not exceed access charge reductions and to prevent rate churn for subscribers. The notice emphasizes that any adjustments should not impact the level of support available to the most economically disadvantaged schools and libraries, and seeks comment on ways to ensure that those entities receive adequate support. As the notice indicates, some parties have already suggested ways to prioritize the distribution of funds if necessary in response to a prior public notice.

3. *Objectives and Legal Basis for the Proposed Action.* The proposed action is supported by sections 1, 4(i) and (j), and 254, of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i) and (j), and 254. The objective is to provide support to schools, libraries and rural health care providers in a manner that does not require consumers' rates to rise, and without causing rate churn.

4. *Description and Estimate of the Number of Small Entities That May Be Affected by this Notice.* The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' and the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. § 632,

[1] The RFA, see 5 U.S.C. § 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. § 605(b).

unless the Commission has developed one or more definitions that are appropriate to its activities.[3] Under the Small Business Act, a ''small business concern'' is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[4]

5. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities having fewer than 1,500 employees.[5] Small incumbent LECs subject to the universal service rules are either dominant in their field of operation or are not independently owned and operated, and consistent with our prior practice they are excluded from the definition of ''small entity'' and small business concerns. Accordingly, our use of the terms ''small entities'' and ''small business'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECS'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.''

6. In the final regulatory flexibility analysis (FRFA) in the Universal Service Order, the Commission described and estimated in detail the number of small entities that would be affected by the new universal service rules.[6] These entities included various types of telecommunications carriers and service providers, as well as schools, libraries, rural health care providers and other beneficiaries of the universal service mechanisms. The proposal in this notice would apply to the same entities described in the FRFA. Therefore we incorporate by reference the description and estimate of the number of small entities affected included in the FRFA to the Order.[7]

7. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The notice does not propose any new reporting or recordkeeping requirements. It proposes to change the existing compliance requirements for universal service by adjusting the amount of support available to schools, libraries, and rural health care providers in the first year of the new universal service support mechanisms and to ensure that the most economically disadvantaged schools and libraries receive adequate support.

8. *Description of Significant Alternatives which could Minimize Any Significant Economic Impact on Small Entities.* The requirements proposed could have a significant economic impact on small telecommunications carriers and providers, including small LECs by reducing the amount of their universal service contributions in the first year of the support mechanisms for schools and libraries, and rural health care providers. In addition the proposed requirements could have a significant economic impact on small schools, libraries, rural health care providers, and small government jurisdictions by reducing the amount of support available during that year. The notice seeks comments on alternative ways of ensuring adequate support for the most economically disadvantaged schools and libraries. We invite specific comment on the impact of the proposed requirements on small entities.

9. *Federal Rules that May Duplicate, Overlap, or Conflict With the Notice.* None.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–13336 Filed 5–15–98; 11:24 am]

BILLING CODE 6712–01–P

[3] 5 U.S.C. § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. § 632).

[4] Small Business Act, 15 U.S.C. § 632 (1996).

[5] 13 C.F.R. § 121.201.

[6] Order, 12 FCC Rcd at 9227–9243.

[7] 12 FCC Rcd at 9227–9243.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–63, RM–9209]

Radio Broadcasting Services; Pottsboro, TX; Durant and Madill, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Grayson Broadcasting Company requesting the allotment of Channel 273C3 to Pottsboro, Texas; the substitution of Channel 292A for Channel 296A at Durant, Oklahoma, and the modification of Station KLBC's license; the substitution of Channel 296A for Channel 273A at Madill, Oklahoma, and the modification of Station KMAD–FM's license. Channel 273C3, Channel 292A, Channel 296A can be allotted to Pottsboro, Texas, Durant and Madill, Oklahoma, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 273C3 can be allotted to Pottsboro, Texas, without the imposition of a site restriction at coordinates 33–46–20 and 96–40–18. Channel 292A can be allotted to Durant and Channel 296A can be allotted to Madill at the existing transmitter sites of Station KLBC and Station KMAD–FM. The coordinates for Channel 292A at Durant are 34–00–07 and 96–25–19. The coordinates for Channel 296A at Madill are 34–06–24 and 96–46–30.

DATES: Comments must be filed on or before June 29, 1998, and reply comments on or before July 14, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Andrew S. Kersting, Fletcher, Heald & Hildreth, P.L.C., 11th Floor, 1300 North 17th Street, Rosslyn, Virginia 22209–3801 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–63, adopted April 29, 1998, and released May 8, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–13166 Filed 5–18–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–61; FCC 98–79]

1998 Biennial Regulatory Review; Form 325–Annual Report of Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Notice of Proposed Rulemaking (''*NPRM*''), the Commission seeks comment on a proposal to eliminate or modify the process of collecting Form 325, ''Annual Report of Cable Television Systems.'' This proceeding is initiated in conjunction with the Commission's 1998 biennial regulatory review. The intended effect of this proceeding is to reduce the regulatory burden on the Commission, as well as cable operators.

DATES: Comments are due on or before June 30, 1998. Reply comments are due on or before July 15, 1998. Written comments by the public on the proposed information collections are due June 9, 1998.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sunil Daluvoy, Consumer Protection and Competition Division, Cable Services Bureau, at (202) 418–1032. For additional information concerning the information collection contained in this *NPRM,* contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *NPRM* in CS Docket No. 98–61, FCC 98–79 which was adopted on April 27, 1998 and released on April 30, 1998. A copy of the complete item is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. The complete Notice of Proposed Rulemaking also is available on the Commission's Internet home page (http://www.fcc.gov). The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and could potentially impose modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the proposed modifications to the information collection requirements contained in this *NPRM,* as required by the Paperwork Reduction Act of 1995. Public comments are due June 9, 1998. Written comments must be submitted by OMB on or before July 20, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0061.

Title: Annual Report of Cable Television Systems—Form 325.

Total Estimated Annual Burden to Respondents: 28,000 hours. The average burden to respondents is estimated to be 2 hours per Form 325 filing. 14,000 filings × 2 hours = 28,000 hours.

Total Estimated Annual Cost of Respondents: $14,000. Postage, stationery and photocopying costs pertaining to this filing requirement are estimated to be $1 per form. 14,000 × $1 = $14,000.

Needs and Uses: The Form 325 is a preprinted form that has been used by the Commission to annually collect ownership, community unit, statistical, technical and services information from cable television systems on a physical system basis. Operators of every operational cable television system complete the form to verify, correct and/or furnish the Commission with the most current information on their respective cable systems. Here, we have reported burden estimates to respondents as they are currently accounted for in the Commission's Information Collection Budget for Collection Number OMB 3060–0061. Depending on public comment generated in this proceeding, the Commission will either amend the content of Form 325, eliminate the Form 325 filing requirement or will reduce the scope or frequency of the filing requirement.

SUMMARY OF ACTION:

I. Background

1. On April 27, 1998, the Federal Communications Commission (''Commission'') adopted a Notice of Proposed Rulemaking which sought comment on our proposal to eliminate or modify Form 325, ''Annual Report of Cable Television Systems'', which is provided for in 47 CFR § 76.403. The Notice of Proposed Rulemaking is summarized below.

A. Introduction

2. Section 11 of the 1996 Telecommunications Act, instructs the Commission ''to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest.'' Although Section 11 does not refer to the cable television rules generally, the Commission has determined that the first biennial review presents an opportunity for a thorough examination of all of the Commission's regulations. We believe that consideration of the continuing need for the Form 325 information collection process is consistent with the Section 11 mandate.

B. Discussion

3. Form 325 constitutes the Commission's basic annual reporting requirement for the cable television industry. The form was developed for use on a one time basis in 1966 and was subsequently adopted as an annual filing requirement in 1971. The form was intended to provide the Commission with information that would be of value in the development of rules and policies applicable to the cable television industry. In addition, information as to both individual franchise areas and physical system operations was to be collected for use in connection with individual waiver or enforcement proceedings. The current Form 325 has also been used for two additional purposes: (1) to obtain subscribership data from which to calculate or review cable operator's

annual federal regulatory fee payments; and (2) to assist, through the acquisition of data as to the frequencies used within systems, in the Commission's signal leakage and interference elimination program.

4. The current version of Form 325 is divided into four substantive parts. Part 1 collects the operator's name, address, and tax identification number of each franchised community served by the cable system. Part 2 requests specific information related to each franchised community, including the type of area served, population, subscribers, potential subscribers, cable plant length, and initial date of service. Part 3 outlines frequency and signal distribution information, such as the type and source of programming, and general channel information. Part 4 summarizes the cable system's ancillary services and users.

5. The Commission's rules anticipate that a Form 325 will be mailed annually to each cable system in the country—at present, over 11,000 cable systems. In order to reduce the filing burden and increase the accuracy of the computer database to be assembled from the completed forms, a process was developed whereby each year preprinted and completed forms were to be sent to each operator reflecting the information in the Commission's database. The system operator would then only be required to correct information that had changed since the last filing. Although this process was intended to ease the burden on system operators and to be administratively efficient, it proved to be resource intensive on the part of the Commission, because the returned forms, many of which were deficient in some manner, had to be manually reviewed for technical and administrative accuracy before being entered into the computer system. As available Commission staff resources were reduced and priorities shifted, it became increasingly difficult to complete the data input process. Thus, the form has not been mailed out or data collected since 1994.

6. As a consequence of the above developments we now prepare to either: (1) Abolish this data collection process entirely, or (2) reform the process so that the data that is deemed important may be collected in a more efficient, less resource intensive, manner. In general, it is vital that the Commission have accurate and timely information regarding the cable television industry, both to assist in the enforcement of existing requirements and for broader rulemaking and policy purposes. We seek comment, however, on whether it continues to be important for the Commission to have access to the type of data reported on the current Form 325 and the extent to which this information is available from other sources. For instance, while not subject to accuracy and specificity requirements applicable to a governmental reporting system, information on the basic facts of cable television system operation is available from commercial sources such as S.C. Nielson and Warren Publishing. We seek comment on whether these commercial sources may rely for their information on the availability of the Commission's data base. Similarly, with regard to the signal interference program, the Commission already uses Form 320 (Basic Signal Leakage Performance Report) to gather a cable system's operational parameters in the event interference occurs to over-the-air services. On the other hand, we noted in our leased access proceeding, that the only official source of leased access information was in the Form 325. Given the possible availability of alternative sources of data, we seek comment on whether we should eliminate the current Form 325 entirely or revise it to obtain more focused information.

7. If Form 325 is retained, we seek comment on any changes that should be made to clarify and improve the usefulness of the data collected. For example, the questions and instructions with respect to channel capacity and use data, which is pertinent to a number of Commission's rules, including must-carry, leased access, and channel occupancy, have not always resulted in consistent responses. In addition, Form 325 does not require the operator to submit specific ownership information, which could be relevant to the Commission's horizontal ownership rules, among others. We seek comment on how to obtain more useful consistent or reliable data if the form is retained.

8. In addition, if the Form 325 is retained, we seek comment on ways to make the collection process less burdensome. For example, the data could be collected at less frequent intervals, a sampling process could be developed or an electronic filing system could be developed to reduce the resources devoted to the data collection process. Should, for example, we adopt a data collection process that applies only to cable systems that meet certain geographic, subscriber, channel capacity, or revenue criteria, or should such forms apply to a random subset of cable operators? We note that if data were collected only from systems with over 10,000 subscribers, approximately 80 percent of all subscribers would be covered yet only approximately one-tenth of the present filings would be required.

II. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis For the Notice of Proposed Rulemaking

9. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission is incorporating an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and proposals in this *NPRM.* Written public comments concerning the effect of the proposals in the *NPRM,* including the IRFA, on small businesses are requested. Comments must be identified as responses to the IRFA and must be filed by the deadlines for the submission of comments in this proceeding. The Secretary shall send a copy of this *NPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act.

10. *Reasons Why Agency Action is Being Considered.* Section 11 of the 1996 Telecommunications Act requires the Commission to conduct a biennial review of regulations that apply to operations and activities of any provider of telecommunications service and to repeal or modify any regulation it determines to be no longer in the public interest. Although Section 11 does not specifically refer to cable operators, the Commission has determined that the first biennial review presents an excellent opportunity for a thorough examination of all of the Commission's regulations.

11. *Need for Action and Objectives of the Proposed Rule Change.* The Commission invites comment on whether to eliminate or modify the requirement for cable systems operators to file the current ''Annual Report of Cable Television,'' Form 325, pursuant to Section 76.403 of the Commission's rules (''Section 76.403''), because the Commission believes the current Form 325 provides limited value, imposes unnecessary burdens on the Commission and cable operators, and duplicates existing practices.

12. *Legal Basis.* The authority for the action proposed for this rulemaking is contained in Section 4(i)–(j) of the Communications Act of 1934, as amended.

13. *Description and Estimate of the Number of Small Entities Impacted.* The IRFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The IRFA defines the term ''small

entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

14. The proposal to either eliminate or modify the requirement to file Form 325 applies to all cable system operators. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for rate regulation purposes. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the changes we are considering.

15. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. *Reporting, Recordkeeping, and other Compliance Requirements:* The Commission is proposing to eliminate certain recordkeeping or information collection requirements, and in the alternative, we are proposing to substantially reduce such burdens.

17. *Significant Alternatives Which Minimize the Impact on Small Entities and which are Consistent with Stated Objectives*: The *NPRM* solicits comments on alternatives to elimination of the FCC Form 325. Any significant alternatives presented in the comments will be considered.

18. *Federal Rules which Overlap, Duplicate, or Conflict with the Commission's Proposal:* None.

19. *Report to Congress.* The Commission shall send a copy of this IRFA along with this Notice in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. § 801(a)(1)(A). A copy of this IRFA will also be published in the **Federal Register**.

B. Paperwork Reduction Act of 1995 Analysis

20. The requirements proposed in this Notice have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and could potentially impose modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the proposed modifications to the information collection requirements contained in this Notice, as required by the 1995 Act. Public comments are due 21 days from date of publication of this Notice in the **Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

21. Written comments by the public on the proposed and/or modified information collections are due June 9, 1998. Written comments must be submitted by the Office of Management and Budget (''OMB'') on the proposed and/or modified information collections on or before [insert date 60 days after date of publication in the Federal Register.] In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

C. Ex Parte Rules

22. This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under Section 1.1206(b) of the rules. 47 CFR § 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR § 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

D. Filing of Comments and Reply Comments

23. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before June 30, 1998 and reply comments on or before July 15, 1998. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554. The Cable Services Bureau contact for this proceeding is Sunil Daluvoy at (202) 418–1032 or sdaluvoy@fcc.gov.

24. Parties are also asked to submit comments and reply comments on diskette, where possible. Such diskette

submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Sunil Daluvoy of the Cable Services Bureau, 2033 M Street N.W., Room 700I, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comments or reply comments), and date of submission. The diskette should be accompanied by a cover letter.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–13168 Filed 5–18–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE96

Migratory Bird Harvest Information Program; Participating States for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) herein proposes to amend the Migratory Bird Harvest Information Program (Program) regulations. The Service plans to require all States except Hawaii to participate in the Program annually, beginning with the 1998–99 hunting season. This regulatory action will continue to require all licensed hunters who hunt migratory game birds in participating States to register as migratory game bird hunters and provide their name, address, and date of birth to the State licensing authority. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds in participating States. The quality and extent of information about harvests of migratory game birds must be improved in order to better manage these populations. Hunters' names and addresses are necessary to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. States will gather migratory bird hunters' names and addresses and the Service will conduct the harvest surveys.

DATES: The comment period for the proposed rule will end on July 20, 1998.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 10815 Loblolly Pine Drive, Laurel, MD 20708–4028. The public may inspect comments during normal business hours in Building 158, 10815 Loblolly Pine Drive (Gate 4, Patuxent Wildlife Research Center), Laurel, MD 20708.

FOR FURTHER INFORMATION CONTACT: Paul I. Padding, MBMO, (301)497–5980.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to expand the Program to include all States except Hawaii, beginning in the 1998–99 hunting season.

Background

The purpose of this cooperative Program is to annually obtain a nationwide sample frame of migratory bird hunters, from which representative samples of hunters will be selected and asked to participate in voluntary harvest surveys. State wildlife agencies will provide the sample frame by annually collecting the name, address, and date of birth of each licensed migratory bird hunter in the State. To reduce survey costs and to identify hunters who hunt less commonly-hunted species, States will also request that each migratory bird hunter answer a series of questions to provide a brief summary of his or her migratory bird hunting activity for the previous year. States are required to ask each licensed migratory bird hunter approximately how many ducks (0, 1–10, or more than 10), geese (0, 1–10, or more than 10), doves (0, 1–30, or more than 30), and woodcock (0, 1–30, or more than 30) he or she bagged the previous year, and whether he or she hunted coots, snipe, rails, and/or gallinules the previous year. States that have band-tailed pigeon hunting seasons are also required to ask migratory bird hunters whether they intend to hunt band-tailed pigeons during the current year. States are not required to ask questions about species that are not hunted in the State (for example, Maine does not allow dove hunting, therefore, the State of Maine is not required to ask migratory bird hunters how many doves they bagged the previous year). States will send this information to the Service, and the Service will sample hunters and conduct national hunter activity and harvest surveys.

A notice of intent to establish the Program was published on June 24, 1991 (56 FR 28812). A final rule establishing the Program and initiating a 2-year pilot phase in three volunteer States (California, Missouri, and South Dakota) was published on March 19, 1993 (58 FR 15093). The pilot phase was completed following the 1993–94 migratory bird hunting seasons in California, Missouri, and South Dakota. A State/Federal technical group was formed to evaluate Program requirements, the different approaches used by the pilot States, and the Service's survey procedures during the pilot phase. Changes incorporated into the Program as a result of the technical group's evaluation were specified in an October 21, 1994 final rule (59 FR 53334), that initiated the implementation phase of the Program. Implementation of the Program began with the addition of one State in 1994, three States in 1995 (60 FR 43318), seven States in 1996 (61 FR 46350), and five States in 1997 (62 FR 45706). Final implementation of the Program will be accomplished with the addition of 27 States (all except Hawaii) in this proposed rule.

Currently, all licensed hunters who hunt migratory game birds in participating States are required to have a Program validation, indicating that they have identified themselves as migratory bird hunters and have provided the required information to the State wildlife agency. Hunters must provide the required information to each State in which they hunt migratory birds. Validations are printed on, written on, or attached to the annual State hunting license or on a State-specific supplementary permit. The State may charge hunters a handling fee to compensate hunting-license agents and to cover the State's administrative costs. The Service's survey design calls for hunting-record forms to be distributed to hunters selected for the survey before they forget the details of their hunts. Because of this design requirement, States have only a short time to obtain hunter names and addresses from license vendors and to provide those names and addresses to the Service. Currently, participating States must send the required information to the Service within 30 calendar days of issuance of the migratory bird hunting authorization.

The Service has requested the cooperation of participating States to facilitate obtaining harvest estimates for hunters who are exempted from a permit requirement and those that are also exempted from State licensing requirements. This includes several categories of hunters such as junior hunters, senior hunters, landowners,

and other special categories. Because exemptions and the methods for obtaining harvest estimates for exempt groups vary from State to State, the Service will incorporate these methods into individual memoranda of understanding with participating States. Excluding from the Program those hunters who are not required to obtain an annual State hunting license also excludes their harvest from the estimates. The level of importance of the excluded harvest on the resulting estimates depends on how many hunters are excluded and on the number of birds they bag. If the level of importance is significant, excluding these hunters will result in serious bias. Minimum survey standards are being developed for exempted categories. States may require exempted hunters to obtain permits (e.g., Maryland required exempted hunters to obtain permits upon entry to the Program in 1994).

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared an Environmental Assessment (EA) on the establishment of the Program and options considered in the ''Environmental Assessment: Migratory Bird Harvest Information Program.'' This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the information in the EA, the Service has determined that amending 50 CFR 20.20 to require all States except Hawaii to participate in the Program annually, beginning with the 1998–99 migratory bird hunting season would not be a major Federal action that would significantly affect the quality of the human environment.

Regulatory Flexibility Act

On June 14, 1991, the Assistant Secretary for Fish and Wildlife and Parks concluded that the rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will affect about 3,300,000 migratory game bird hunters when it is fully implemented. It will require licensed migratory game bird hunters to identify themselves and to supply their names, addresses, and birth dates to the State licensing authority. Additional information will be requested in order that they can be efficiently sampled for a voluntary national harvest survey. Hunters will be required to have evidence of current participation in the Program on their person while hunting migratory game birds.

In total, the Service estimates that the Program information collection will impose costs on society on the order of $4.1 million per year. The Service estimates that hunters will require about 112,000 hours to complete Program forms. At the wage rate, this time is estimated to be valued at $1.5 million (the average estimated cost of time to an individual is less than $0.50). The cost to the States to process and forward the Program information is estimated to be $2.6 million. Service payments of $0.10 per hunter name will mitigate the impact of this requirement on State wildlife budgets to some extent. Several States are imposing additional fees on migratory bird hunter registrations to cover their additional costs. However, the Service notes that the Program costs less than two tenths of one percent of the $3.1 billion migratory bird hunters spent in 1996 for travel, equipment, and hunting rights.

Collection of Information: Migratory Bird Harvest Information Program

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Service has received approval for this collection of information, with approval number 1018–0015, with the expiration date of August 31, 1998. The information to be collected includes: the name, address, and date of birth of each licensed migratory bird hunter in each participating State. Each licensed migratory bird hunter will also be asked to provide a brief summary of his or her migratory bird hunting activity for the previous year. Hunters' names, addresses, and other information will be used to provide a sample frame for voluntary hunter surveys to improve harvest estimates for all migratory game birds. The Service needs and uses the information to improve the quality and extent of information about harvests of migratory game birds in order to better manage these populations.

All information is to be collected once annually from licensed migratory bird hunters in participating States by the State license authority. Participating States are required to forward the hunter information to the Service within 30 calendar days of issuance of the migratory bird hunting authorization. Recent information from participating States indicates that the annual reporting and record-keeping burden for this collection of information averages 2 minutes per response for 3,300,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record-keeping burden for this collection is estimated to be 112,000 hours.

Comments are invited from the public on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, usefulness, and clarity of the information to be collected; and (4) ways to minimize the burden or the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments and suggestions on the information collection requirements should be sent to the Office of Information and Regulatory Affairs; OMB, Attention: Interior Desk Officer, Washington, DC 20503; and a courtesy copy to the Service Information Collection Clearance Officer, ms-224 ARLSQ, Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public comment on the proposed regulations.

Executive Order 12866

This proposed rule was not subject to OMB review under Executive Order 12866.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities.

Civil Justice Reform

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and Recordkeeping requirements, Transportation, Wildlife.

For the reasons set out in the preamble, the Service proposes to amend 50 CFR part 20 as set forth below.

PART 20—MIGRATORY BIRD HUNTING

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

2. Amend § 20.20 by revising paragraphs (a), (b), and (e) to read as follows:

§ 20.20 Migratory Bird Harvest Information Program.

(a) Information collection requirements. The collections of information contained in § 20.20 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0015. The information will be used to provide a sampling frame for the national Migratory Bird Harvest Survey. Response is required from licensed hunters to obtain the benefit of hunting migratory game birds. Public reporting burden for this information is estimated to average 2 minutes per response for 3,300,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total annual reporting and record-keeping burden for this collection is estimated to be 112,000 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, ms-224 ARLSQ, Fish and Wildlife Service, Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0015, Washington, DC 20503. (b) General provisions. Each person hunting migratory game birds in any State except Hawaii must have identified himself or herself as a migratory bird hunter and given his or her name, address, and date of birth to the respective State hunting licensing authority and must have on his or her person evidence, provided by that State, of compliance with this requirement.

* * * * *

(e) State responsibilities. The State hunting licensing authority will ask each licensed migratory bird hunter in the respective State to report approximately how many ducks, geese, doves, and woodcock he or she bagged the previous year, whether he or she hunted coots, snipe, rails, and/or gallinules the previous year, and, in States that have band-tailed pigeon hunting seasons, whether he or she intends to hunt band-tailed pigeons during the current year.

Dated: April 7, 1998.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–13209 Filed 5–18–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980414095–8095–01; I.D. 040798C]

RIN 0648–AJ37

Fisheries of the Northeastern United States; Dealer Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations which require dealers of summer flounder, scup, black sea bass, Atlantic sea scallops, Northeast (NE) multispecies, Atlantic mackerel, squid, and butterfish to report their fish purchases to NMFS. This action would improve weekly monitoring of landings, by species, by requiring dealers to use a call-in Interactive Voice Response (IVR) system to report their purchases to NMFS. The rule would also modify the schedule for the submission by federally permitted dealers of comprehensive written reports. Reporting requirements for party and charter vessels holding a federal summer flounder or scup permit, other than a moratorium permit, would be modified to make them consistent with reporting requirements in other fisheries.

DATES: Comments must be received on or before June 18, 1998.

ADDRESSES: Comments on the proposed rule or proposed IVR system should be sent to Andrew A. Rosenberg, Ph.D., Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Proposed Rule for Dealer Reporting.''

Comments on the burden hour estimates for collection-of- information requirements contained in this proposed rule should be sent to Andrew A. Rosenberg, Ph.D., and to the Office of Information and Regulatory Affairs, Attention: NOAA Desk Officer, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kelley McGrath, (978) 281-9307 or Gregory Power, (978) 281-9304.

SUPPLEMENTARY INFORMATION: Regulations implementing the fishery management plans for the summer flounder, scup, black sea bass, Atlantic sea scallops, NE multispecies, and Atlantic mackerel, squid, and butterfish fisheries are found at 50 CFR part 648. These fishery management plans were prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. All dealers of summer founder, scup, black sea bass, Atlantic sea scallops, NE multispecies, Atlantic mackerel, *Illex* or *Loligo* squid or butterfish must have been issued and have in their possession a Federal dealer permit in order to purchase such species from fishing vessels. All dealers issued a Federal dealer permit are required to submit weekly reports of all fish purchases to the Administrator, Northeast Region, NMFS (Regional Administrator). To make it easier for federally permitted dealers to comply with weekly reporting requirements and to improve the monitoring of commercial landings, NMFS proposes to modify the dealer reporting requirements.

Several species are now being managed using domestic annual harvest limits, such as annual or seasonal quotas and target or actual total allowable catch (TAC) limits. For example, summer flounder and scup are managed through annual commercial quotas, while the regulated NE multispecies are managed through annual target TACs. Regulated multispecies are defined as a subset of the NE multispecies that includes cod, haddock, pollock, redfish, white hake, yellowtail flounder, witch flounder, windowpane flounder, winter flounder, and American plaice. In order to manage these fisheries effectively, accurate and timely monitoring of landings is required. For the purposes of this proposed rule, species managed by quotas or TACs are referred to as ''quota-managed species.''

Interactive Voice Response System

This proposed rule would require federally permitted fish dealers to use a NMFS-established IVR system to report weekly purchases of all quota-managed species, except those species deferred from IVR system coverage by the Regional Administrator. This would enable NMFS to determine more quickly when domestic harvest limits have been reached. Species whose purchases would have to be reported weekly through the IVR system include summer flounder, scup, black sea bass, regulated NE multispecies, Atlantic mackerel, *Illex* and *Loligo* squid, and butterfish.

The Regional Administrator would have the authority to defer species from coverage by the IVR system weekly reporting requirements if landings are not expected to reach levels that would cause the applicable target exploitation rate corresponding to a given domestic annual harvest limit, target or actual TAC or annual or seasonal quota specified in the fishery management plan for that species to be achieved. This deferral determination would be based on the purchases reported, by species, in the comprehensive written reports submitted by dealers and other available information. If the Regional Administrator determines that a species should be deferred from the IVR system weekly reporting requirement, he/she would publish notification so stating in the **Federal Register**. If data indicate that landing levels subsequently increase to an extent that this determination ceases to be valid, the Regional Administrator would terminate the deferral by publishing notification in the **Federal Register**. Therefore, it is conceivable that a deferral from the IVR system weekly reporting requirement and a withdrawal of a given deferral could occur in any given fishing year for a given quota-managed species. NMFS anticipates that following a review of landing levels and other applicable information several of the quota-managed species will be deferred from the IVR system weekly reporting requirement at the time of implementation of any final rule.

Dealers would be required to report through the IVR system, on a weekly basis, purchases of those quota-managed species not deferred from coverage. The IVR system would use a toll-free number that federally permitted dealers would call to report weekly purchases of IVR monitored species. For each species requiring IVR monitoring, NMFS proposes to require federally permitted dealers to report the following information weekly through the IVR system: Dealer permit number; dealer code; pounds purchased by species; week in which purchases were made; and state of landing for each species purchased. If no purchases of the IVR monitored species were made during the week, the dealer would be required to submit a report so stating through the IVR system.

Trip-by-Trip Dealer Reports

Currently, federally permitted dealers are required to submit comprehensive trip-by-trip written reports listing all species purchased within 3 days after the end of the reporting week. Because the IVR system would provide timely monitoring of dealer purchases by species, NMFS proposes to amend this requirement to allow dealers 16 days following the end of the reporting week in which to complete and submit the trip-by-trip written reports for all species. In addition to providing dealers with more time to complete these reports, this proposed change would also result in more accurate price information being collected on the written reports. Such pricing information is often unavailable to dealers within 3 days following the end of the reporting week, but is available within 16 days following the end of the reporting week.

Dealers would continue to report the following information, within 16 days following the end of the reporting week, on forms supplied by or approved by the Regional Administrator: Dealer name and mailing address; dealer number; name and permit number or hull number (United States Coast Guard (USCG) documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; dates of purchases; trip identifier for fishing trip from which fish are purchased; pounds by species (by market category, if applicable); price per pound, by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of dealer or other authorized individual; and any other information deemed necessary by the Regional Administrator. If no fish were purchased during the reporting month, the dealer would be required to report that on the required form, which would be submitted within 16 days following the end of the reporting month. Dealers would retain the option of submitting the required information electronically if authorized in writing to do so by the Regional Administrator.

Additional Dealer and Processor Reporting Changes

NMFS proposes to modify five requirements pertaining to dealer reporting. Dealers are currently required to report the Federal permit number of the vessel from which fish are purchased or landed. However, many of the species landed by dealers are not subject to Federal management and are caught by vessels that hold no Federal permits. This requirement would be modified to require dealers to report either the Federal permit number or the hull number (USCG documentation number or state registration number, as appropriate) of the vessels from which fish are purchased or landed.

The existing reporting form, NOAA Form 88-30, specifies market categories for several species. The regulations would be revised to make it clear to dealers that species must be reported by market category, when applicable.

The reporting period for negative written reports (reports stating that no fish were purchased) would be changed from weekly to monthly. Currently, federally permitted dealers are required to submit a weekly written negative report if no purchases of any fish were made during the reporting week. This proposed rule would instead require dealers to submit monthly a written negative report only if no purchases of any fish were made during a reporting month (defined as a calendar month).

NMFS also proposes adding language to amplify an existing prohibition to allow for the collection of biological data (fish lengths) and samples (scales and otoliths for aging) which are necessary to characterize the composition of the landed catch. While most dealers have historically and voluntarily allowed access to their premises for the collection of these vital data, NMFS proposes to revise the regulations so that it is explicit that federally permitted dealers are required to grant such access.

Under current regulations at § 648.7(a)(2)(ii), processors are required to notify the Regional Administrator if the plant processing capacities change by more than 10 percent during any year. NMFS proposes to require that the processor notify the Regional Administrator in writing within 10 days after this change.

Vessel Reporting Change

NMFS further proposes to revise the reporting requirements for any owner of a party or charter vessel issued a federal summer flounder or scup permit, other than a moratorium permit. Currently, owners of party or charter vessels issued

a summer flounder or scup permit, other than a moratorium permit, and carrying passengers for hire are required to submit an accurate daily fishing log report for each trip that lands summer flounder or scup, respectively. This proposed rule would amend the vessel reporting requirements to require these vessels to submit reports for each trip, regardless of the species fished for or retained. This change would make the requirements for party/charter vessels in the summer flounder and scup fisheries consistent with those in the black sea bass, NE multispecies, and Atlantic mackerel, squid, and butterfish fisheries.

Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA, and clarifies or makes minor modifications to requirements previously approved under OMB control number 0648-0229 (2 minutes per response), OMB control number 0648-0212 (5 minutes per response), OMB Control No. 0648- 0018 (6 minutes per response), and OMB Control No. 0648-0235 (5 minutes per response). The requirement to use an IVR system for weekly dealer reporting has been submitted to OMB for approval under OMB control number 0648-0229 and is estimated to take 4 minutes per response. The response estimates shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing, reviewing and submitting the collection of information. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see ADDRESSES).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted as proposed, would not have significant impact on a substantial number of small entities as follows:

The proposed rule would require dealers of summer flounder, scup, black sea bass, Atlantic mackerel, squid, butterfish, and NE multispecies to report their purchases to the National Marine Fisheries Service (NMFS) on a weekly basis through a NMFS-established Interactive Voice Response (IVR) system. The reporting schedule for federally permitted dealers would be modified to extend the submission deadline for comprehensive written reports. These proposed changes would enable NMFS to track landings of quota-managed species on a real time basis through the IVR system, while providing dealers with the convenience of additional time to submit the comprehensive written reports.

Reporting requirements for any owner of a party or charter vessel issued a summer flounder or scup permit, other than a moratorium permit, would be modified making the requirements consistent with those in other fisheries. Currently, owners of a party or charter vessel issued a summer flounder or scup permit, other than a moratorium permit, and carrying passengers for hire are required to submit a report for each trip that lands summer flounder or scup, respectively. This rule would require these vessels to submit reports for each trip, regardless of the species fished for or retained.

Because the information being collected from dealers and vessel owners is regularly compiled for their own business records, providing NMFS with the information is a minimal burden and will not result in a significant economic impact on the dealers or vessel owners.

This rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 14, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Serivce.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 648.2 is amended by adding, in alphabetical order, definitions for ''Dealer code'', ''IVR system'', and ''Quota- managed species'' to read as follows:

§ 648.2 Definitions.

* * * * *

Dealer code means a confidential five-digit number assigned to each dealer required to submit purchases using the IVR system for the purpose of maintaining the integrity of the data reported through the IVR system.

* * * * *

IVR system means the Interactive Voice Response dealer reporting system established by the Regional Administrator for the purpose of monitoring dealer purchases.

* * * * *

Quota-managed species means any species of finfish managed under this part by an annual or seasonal quota or by annual target or actual TAC.

* * * * *

3. In § 648.7 paragraph (a)(2) is redesignated as paragraph (a)(3), new paragraphs (a)(2) and (g) are added, paragraph (b)(1)(iii) is removed, the first sentence of paragraph (a)(1) introductory text, and paragraphs (a)(1)(i), (a)(3)(i), (a)(3)(ii), (b)(1)(i) and (f)(1) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Detailed weekly report.* Federally permitted dealers must submit to the Regional Administrator, or official designee, a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator, a report of all fish purchases, except surf clam and ocean quahog dealers or processors who are required to report only surf clam and ocean quahog purchases. * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid and butterfish dealers must provide: Dealer name and mailing address; dealer number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator. All report forms must be signed by the dealer or other authorized individual. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased

during an entire reporting month, a report so stating on the required form must be submitted.

* * * * *

(2) *Weekly IVR system reports.* (i) Federally permitted dealers purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other information required by the Regional Administrator, to the Regional Administrator or to an official designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species; week in which species were purchased; and state of landing for each species purchased. If no purchases of quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section were made during the week, a report so stating must be submitted through the IVR system in accordance with paragraph (f) of this section.

(ii) The Regional Administrator may defer any quota-managed species from the IVR system reporting requirements if landings are not expected to reach levels that would cause the applicable target exploitation rate corresponding to a given domestic annual harvest limit, target or actual TAC or annual or seasonal quota specified for that species to be achieved. The Regional Administrator shall base any such determination on the purchases reported, by species, in the comprehensive written reports submitted by dealers and other available information. If the Regional Administrator determines that any quota-managed species should be deferred from the weekly IVR system reporting requirements, the Regional Administrator shall publish notification so stating in the **Federal Register**. If data indicate that landing levels have increased to an extent that this determination ceases to be valid, the Regional Administrator shall terminate the deferral by publishing notification in the **Federal Register**.

(3) * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid, and butterfish dealers must complete the ''Employment Data'' section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surf clam and ocean quahog processors and dealers must provide the average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; an estimate, for the next year, of such processing capacities; and total payroll for surf clam and ocean quahog processing, by month. If the plant processing capacities required to be reported in this paragraph (a)(3)(ii) change more than 10 percent during any year, the processor shall notify the Regional Administrator in writing within 10 days after the change.

(b) *Vessel owners*—(1) *Fishing Vessel Trip Reports*—(i) *Owners of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, or Atlantic mackerel, squid, and butterfish permits.* The owner or operator of any vessel issued a permit for summer flounder, scup, black sea bass, Atlantic sea scallops, NE multispecies, Atlantic mackerel, squid or butterfish must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, vessel owners or operators may submit reports electronically, for example by using a VTS or other system. At least the following information, and any other information required by the Regional Administrator, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a party or charter boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds (or count, if a party or charter vessel), by species, of all species landed or discarded; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

* * * * *

(f) *Submitting reports*—(1) *Dealer or processor reports.* (i) Detailed weekly trip reports, required by paragraph (a)(1) of this section, must be postmarked or received within 16 days after the end of each reporting week. If no fish are purchased during a reporting month, the report so stating required under paragraph (a)(1)(i) of this section must be postmarked or received within 16 days after the end of the reporting month.

(ii) Weekly IVR system reports required in paragraph (a)(2) of this section must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous reporting week.

(iii) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to § 600.502 of this chapter) for the address of NMFS Statistics.

* * * * *

(g) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and to make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

4. In § 648.14 paragraph (a)(8) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g).

* * * * *

[FR Doc. 98–13300 Filed 5–18–98; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 96

Tuesday, May 19, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Small and Disadvantaged Business Utilization; Federal Subcontracting Forum, Workshop and Opportunities Fair

AGENCY: U.S. Department of Agriculture (USDA), Office of Small and Disadvantaged Business Utilization.

ACTION: Notice of meeting.

SUMMARY: The Office of Small and Disadvantaged Business Utilization (OSDBU) at the U.S. Department of Agriculture (USDA) will hold a Federal Subcontracting Forum, Workshop and Opportunities Fair on June 24, 1998, from 9:00 AM to 4 PM, in the Jamie L. Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250. The morning session (9 AM–12 Noon), which will be held in Room 107–A, will consist of presentations from featured guest speakers and the workshop. The subcontracting opportunities fair will take place in the afternoon from 1 PM to 4 PM in the Patio of the building. Participation at the morning session is open to large business concerns and non-profit organizations. Small business concerns are invited to participate in the afternoon session.

Presentation topics will include Best Practices in Subcontracting; the New OFPP Policy Letter on Subcontracting; the Impact of the Adarand Decision on the Federal Subcontracting Program (a surprising new development); An Update on the USDA Subcontracting Program; and the Future of Subcontracting. Among the guest speakers will be Stephen Schooner, Associate Administrator for Procurement Policy at the Office of Federal Procurement Policy (OFPP), and Robert C. Taylor, Manager of the Federal Subcontracting Program at the Small Business Administration (SBA). The workshop will cover the required elements of a subcontracting plan, the reporting of subcontract award data, and other pertinent information pertaining to the Subcontracting Program. Confidential and proprietary information will not be discussed. Participants will have the opportunity to discuss subcontracting issues/concerns during the morning session. Representatives from large business concerns and non-profit organizations will be available at the opportunities fair to discuss subcontracting opportunities. Seating is limited, and reservations are required. Reservations will be taken on a first-come, first-served basis.

DATE: Reservations must be made by June 15, 1998 (fax or e-mail only).

ADDRESS: Confirm by facsimile at (202) 720–3001. Confirm by e-mail at janet.baylor@usda.gov.

FOR FURTHER INFORMATION: Contact Loretta D'Amico, USDA/OSDBU, 1400 Independence Avenue, SW, AG STOP 9501, Washington, DC 20250–9501, telephone: (202) 720–7117, or visit the OSDBU's ''What's New'' Section on the Internet at www.usda.gov/da/smallbus.html. If you need accommodations to participate in the event, please notify Ms. D'Amico by June 15, 1998 at (202) 720–7117 (v) or through the Federal Information Relay Service at 1–800–877–8339 (voice/tdd).

Sharron L. Harris,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 98–13191 Filed 5–18–98; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Government Owned Inventions Available for Licensing

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for Licensing in accordance with 35 U.S.C. 207 and 37 CFR 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to June Blalock, Technology Licensing Coordinator, USDA, ARS, Office of Technology Transfer, Room 415, Bldg. 005, BARC–W, Beltsville, Maryland 20705–2350; telephone: 301–504–5989 or fax: 301–504–5060. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

S.N. 08/580,664, ''The Use of Enterobacter Cloacae as an Endophyte for the Control of Diseases Caused by Fungi''

S.N. 08/785,716, ''Glutenin Genes and Their Uses''

S.N. 08/890,719, ''Production of Antisera Specific to Major Histocompatibility Complex Molecules in Chicken''

S.N. 08/898,999, ''Flow Cytometry Nozzle for High Efficiency Cell Sorting''

S.N. 08/906,333, ''Method of Using Bile Salts to Inhibit Red Heat in Stored Brine-Cured Hides and Skins''

S.N. 08/908,215, ''A Strain of Gypsy Moth Virus with Enhanced Polyhedra and Budded Virus Production''

S.N. 08/918,832, ''Restructured Fruit and Vegetable Products and Processing Methods''

S.N. 08/946,888, ''Non-Thermal Energy Treatment for the Reduction of Microbial Population in Liquid Food Products''

S.N. 08/974,938, ''Biocontrol Agents for Take-All''

S.N. 08/978,761, ''The Prediction of Total Dietary Fiber in Cereal Products Using Near-Infrared Reflectance Spectroscopy''

S.N. 08/989,887, ''Method and Pressure Gauge Mechanism for Determining and Controlling Moisture Content in Bales of Material Such as Cotton''

S.N. 08/996,136, ''Whey Protein Fractionation Using High Pressure or Supercritical Carbon Dioxide''

S.N. 60/061,378, ''Unique Whitefly Ketose Reductase/Sorbitol Dehydrogenase Enzyme''

June Blalock,

Technology Licensing Coordinator.

[FR Doc. 98–13303 Filed 5–18–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Southern States Cooperative, Inc., of Richmond, Virginia, an exclusive license to Plant Variety Protection Certificate Application No. 9800029, Soybean, ''Tyrone'' filed November 19, 1997. ''Tyrone'' is a forage soybean cultivar recommended for forage production in the southern states and is not intended for grain production. ''Tyrone's'' Notice of Availability was published in the **Federal Register** on January 8, 1998.

DATES: **Federal Register** comments must be received on or before July 20, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Southern States Cooperative submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–13302 Filed 5–18–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–026N]

Meeting on the Browning of Ground Beef Patties

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a public meeting to discuss safe handling measures consumers should take in cooking hamburgers. The results of a study on the browning of ground beef patties before they reach an internal temperature of 160 °F will be presented. The purpose of the meeting is to discuss the food safety issues presented by premature browning, including the question whether color is an appropriate indicator that ground beef is cooked to a safe internal temperature.

DATES: The meeting will be held on May 27, 1998, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Arlington Hilton & Towers, 950 North Stafford Street, Arlington, VA, 22203. The hotel is immediately adjacent to the Ballston Metro Station.

FOR FURTHER INFORMATION CONTACT: To register for the meeting and to obtain a copy of the study results on premature browning of ground beef patties, contact Ms. Jennifer Callahan of the FSIS Planning Office at (202) 501–7136 or FAX (202) 501–7642. Participants who require a sign language interpreter or other special accommodation should contact Ms. Callahan at the above numbers by May 22, 1998.

SUPPLEMENTARY INFORMATION: A study was commissioned by FSIS in 1997 to examine laboratory techniques for cooking and color evaluation and to test logistics for ground beef patties. A previous meeting was held to seek public comment on the study design from consumers, public health officials, and other interested persons. The May 27 meeting announced in this notice will focus on the results of the study and other public and private research efforts on premature browning. FSIS is particularly interested in discussing options for educating consumers about the safe cooking of these products.

The meeting is open to the public on a space-available basis. Transcripts of this meeting will be available in the FSIS Docket Office, Room 102, 300 12th Street, SW, Washington, D.C. 20250–3700.

Done in Washington, DC, on May 11, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–13165 Filed 5–18–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Grazing Permit Reissuance, Sheep Grazing on the Ash Mountain and Iron Mountain Allotments, Absaroka-Beartooth Wilderness, Gallatin National Forest, Park County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of reissuing a 10-year term grazing permit to continue authorizing sheep grazing in the Ash Mountain and Iron Mountain Allotments, located in the Hellroaring Creek and Buffalo Creek drainages in the southwest corner of the Absaroka-Beartooth Wilderness, Gallatin National Forest, Gardiner Ranger District, Park County, Montana. The permit reissuance would authorize the continued use of a three-unit rest-rotation grazing system for grazing 1200 ewe/lamb pairs for a 60-day grazing season. Also, the proposed action includes incorporation grizzly bear and riparian habitat protection standards into the new grazing permit, where they had only been implemented via the Annual Operating Plan in the past. The purpose of the proposed action is (1) to continue achieving Gallatin National Forest Land and Resource Management Plan (Forest Plan) objectives for domestic livestock production on the Ash Mountain and Iron Mountain Allotments, and in a manner that protects other resources including vegetation, wildlife, and riparian habitat.

The Forest Plan provides overall guidance for land management activities, including livestock grazing, within the area. This EIS will tier to the Gallatin Forest Plan Final EIS (September, 1987).

DATES: Written comments and suggestions should be received on or before July 6, 1998.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to John R. Logan, District Ranger, Gardiner Ranger District, Gallatin National Forest, P.O. Box 5, Gardiner, Montana, 59030.

FOR FURTHER INFORMATION CONTACT: Pat Hoppe, EIS Team Leader, Gardiner Ranger District, Gallatin National Forest, Phone (406) 848–7375.

SUPPLEMENTARY INFORMATION:

Reissuance of a 10-year term grazing permit is proposed on the Ash Mountain and Iron Mountain Allotments. These allotments would be combined and managed as one allotment called the Ash/Iron Mountain Allotment. It would consist of approximately 74,000 acres, of which about 14,000 acres are classified as suitable for livestock grazing. The proposed action includes continuing the use of a three-unit rest-rotation grazing system for 2400 sheep months (1200 ewe/lamb pairs would be grazed July 15 through September 15 each year). This system allows the sheep to graze one unit (pasture) one summer every three years. The other two units would not be grazed two out of the three years. Also, the proposed action includes incorporating grizzly bear and riparian habitat protection standards into the new grazing permit, where they had only been implemented via the Annual Operating Plan in the past.

The Gallatin National Forest Land and Resource Management Plan (Forest Plan) provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The purposes of the proposed action are to: (1) continue achieving Gallatin Forest Plan objectives for domestic livestock production on the Ash Mountain and Iron Mountain Allotments, (2) continue providing flexibility in the grazing schedule and better protect vegetation and wildlife habitat by continuing the three-unit rest-rotation system for 2400 sheep months of grazing, and (3) provide stronger administrative control over permitted grazing activities to better assure protection of riparian areas and grizzly bears and to bring the permit into compliance with the Forest Plan. The decision to be made is ''should sheep grazing be allowed to continue in the Ash Mountain and Iron Mountain Allotments, and under what conditions.''

The project area consists of approximately 74,000 acres of National Forest land located in T7S, R10–12E; T8S, R10–12E; and T9S, R10–11E, P.M. MT. This area is located entirely within the Absaroka-Beartooth Wilderness.

The area of the proposed continuation of grazing would occur within Management Areas 4 and 7. Grazing would occur only on suitable grazing land. Below is a brief description of the applicable management area direction.

Management Area 4—This area includes the Gallatin National Forest portions of the Absaroka-Beartooth Wilderness and Lee Metcalf Wilderness. Occupied grizzly bear habitat is present in much of the area. Livestock grazing is allowed within this management area so long as it is conducted in accordance with wilderness values and grizzly bear standards and guidelines.

Management Area 7—These are riparian zones or areas where vegetation is present that requires either free or unbounded water or soil moistures in excess of what is normally found in the area. Lands within this management area are suitable for livestock grazing as long as soil, water, vegetation, fish, and dependent wildlife species are protected.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. Additional grazing alternatives will be considered in response to issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which began in October, 1997. In addition to this scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meeting are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Some public comments have already been received in conjunction with earlier scoping efforts on this project. The following principle issues have been identified so far:

1. Livestock grazing may affect sensitive plants.
2. Livestock grazing may adversely increase competition for forage between big game and domestic livestock.
3. Domestic sheep may affect the population of bighorn sheep by transmitting diseases.
4. Livestock grazing may cause conflicts with grizzly bears and indirectly increase bear mortalities.

Other issues commonly associated with livestock grazing include: effects on water quality, riparian habitat, and soils. This list will be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in July of 1998. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Ash Mountain and Iron Mountain Allotments participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by October, 1998.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be

waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives. To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

John R. Logan, District Ranger, is the responsible official for this environmental impact statement. His address is U.S. Forest Service, Gardiner Ranger District, P.O. Box 5, Gardiner, MT 59030.

Dated: May 4, 1998.

David P. Garber,

Forest Supervisor, Gallatin National Forest.

[FR Doc. 98–13285 Filed 5–18–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Timber Harvest, Reforestation, Road Construction and Road Closure Near Buck Creek, Taylor Creek and Eldridge Creek Drainages; Gallatin National Forest, Gallatin County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of timber harvest, reforestation, and road construction and closure in the vicinity of Buck Creek, Taylor Creek and Eldridge Creek drainages (herein referred to as the Taylor Fork Project), located in the Madison Mountain range, Gallatin National Forest, Hebgen Lake Ranger District, Gallatin County, Montana. The Taylor Fork project is one of several projects being proposed on the Gallatin National Forest to contribute timber volume to facilitate acquisition of approximately 54,000 acres of lands currently owned by Big Sky Lumber Company (BSL) located within the proclamation boundary of the Gallatin National Forest. These lands are checkerboard inholdings that originate as part of the construction grants given to the Northern Pacific Railway Company by the Federal Government in the late 1800's and early 1900's. In addition, this project will contribute toward providing a flow of wood products from National Forest lands.

The Gallatin National Forest Land and Resource Management Plan (Forest Plan) provides overall guidance for land management activities, including timber and road management, within the area. The proposed actions of timber harvest, reforestation, road reconstruction, road construction, and road closures are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). This EIS will tier to the Gallatin Forest Plan Final EIS (September, 1987).

DATES: Written comments and suggestions should be on or before June 18, 1998.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or a request to be placed on the project mailing list to Stan Benes, District Ranger, Hebgen Lake Ranger District, Gallatin National Forest, P.O. Box 520, West Yellowstone, Montana 59758.

FOR FURTHER INFORMATION CONTACT: Julie Shea, EIS Team Leader, Forest Ecology Group, Gallatin National Forest, Phone (406) 585–1655.

SUPPLEMENTARY INFORMATION: Timber harvest and reforestation is proposed on approximately 560 acres of forested land in the Taylor Fork project area, which has been designated as suitable for timber management by the Gallatin Forest Plan. The timber harvest operations and general administration of National Forest lands will require construction up to 3.0 miles of new roads and reconditioning up to 12.0 miles of existing road. The EIS will also analyze a proposal of restoring up to 50 miles of existing road that currently are not open to public use.

The Gallatin Forest Plan provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The primary purpose of this project is to utilize available timber volume within the Taylor Fork area as one of several federal exchange assets to be used to facilitate acquisition of approximately 54,000 acres of lands currently owned by BSL located within the proclamation boundary of the Gallatin National Forest. These lands are checkerboard inholdings that originate as part of the construction grants given to the Northern Pacific Railway Company by the Federal Government in the late 1800's and early 1900's.

Another purpose for the BSL/Taylor Fork Timber Sale proposal is to contribute toward providing a flow of wood products from National Forest lands identified as ''suitable'' for timber production, as directed in the Gallatin Forest Plan (Forest Plan, pg. II–1). The forested areas being considered for harvest are identified as productive Forest lands available for timber harvest provided grizzly bear habitat objectives are met. The purpose of road construction and reconstruction is to access stands of timber to be harvested. All new roads will be effectively closed to vehicle travel after completion of post-sale activities.

The purpose of closing roads is to minimize future road maintenance costs, reduce sedimentation, and to regulate overall open road density to maintain or improve big game habitat security.

The project area consists of approximately 560 acres of National Forest land located in T8S, R3E, Sec 22 and 26; and T9S, R3E, Sec 10, 11, 15 and 16, P.M. MT. Road work is proposed across private land in T8S, R3E, Sec 27 and 35. The majority of the harvesting would occur within the Taylor Creek and Eldridge Creek area, and south of Buck Creek located in the Madison Mountain range.

The areas of proposed timber harvest and reforestation would occur within Management Area 13. Timber harvest would occur only on suitable timber land. Road construction and reconstruction would occur in this management area plus Management Area 7 when crossing streams. Below is a brief description of the applicable management direction.

Management Area 13—This management area consists of forested, occupied grizzly bear habitat. The productive Forest lands area available for timber harvest provided grizzly bear habitat objectives are met. Management goals for MA 13 include: (1) managing vegetation to provide habitat necessary to recover the grizzly bear; (2) meet grizzly bear mortality reduction goals as established by the Interagency Grizzly Bear Committee; (3) allow a level of timber harvest compatible with Goal 1; and (4) meet State water quality standards and maintain stream channel stability.

Management Area 7—These are riparian zones or areas where vegetation

is present that requires either free or unbounded water or soil moistures in excess of what is normally found in the area. Lands within this management area are suitable for timber harvest as long as soil, water, vegetation, fish, and dependent wildlife species are protected. These suitable lands must also be adjacent to other management areas suitable for timber management.

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities in response to issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered, including the effects caused by recent and past harvesting and road construction on private lands. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7), which will occur during May 1998. In addition to this initial scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify issues to be analyzed in depth.
3. Eliminate insignificant issues or those which have been covered by a relevant previous environmental analysis, such as the Gallatin Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

The following principle issues have been identified so far:

1. The potential effect of proposed timber harvest and associated road development on grizzly bear habitat (primarily security and cover).
2. The potential of proposed timber harvest and associated road development activities to displace grizzly bears use within the sale area.
3. The potential for proposed harvest and associated road development to affect water quality and stream conditions.

Other issues commonly associated with timber harvesting and road construction include: effects on native fisheries, old growth habitat, big game species, sensitive wildlife and plant species, cultural resources, soils, and scenery in the area. This list will be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in August of 1998. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is every important that those interested in management of the Taylor Fork project area participate at that time. The Final EIS is scheduled to be completed by mid-November, 1998.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives. To assist the Forest Service in identifying and considering issues, comments should be as specific to this proposal as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, P.O. Box 130, Federal Building, Bozeman, MT 59771.

Dated: May 6, 1998.

David P. Garber,

Forest Supervisor.

[FR Doc. 98–13287 Filed 5–18–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Retail Trade Report.

Form Number(s): B–151, B–151–A, B–151D, B–153, B–153D.

Agency Approval Number: 0607–0013.

Type of Request: Revision of a currently approved collection.

Burden: 9,817 hours.

Number of Respondents: 23,700.

Avg Hours Per Response: 25 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Retail Trade Survey to collect annual totals of sales, inventories, inventory valuation methods, purchases, and accounts receivable balances from a sample of retail establishments in the United States. The estimates compiled from this survey are critical to the accurate measurement of total economic activity and are used in computing such indicators of economic well-being as the Gross Domestic Product and the National Income and Product Accounts. Survey results also provide valuable information for economic policy decisions and actions by the government and are widely used by private businesses, trade organizations, professional associations, and others for market research and analysis.

This request for revision informs OMB of a recent change in sample design. This redesign has increased the number of respondents by about 3,000, while decreasing, on average, the number of data requests to each respondent.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, Sections 182, 224, and 225.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent on or before June 18, 1998 to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–13172 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Field Representative Exit Questionnaire

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Geraldine Burt, Census/Field Division, Room 1684/FOB 3, Washington, DC 20233–4400, and 301–457–1935.

SUPPLEMENTARY INFORMATION:

I. Abstract

Retention of trained field interviewing staff is a major concern for the Census Bureau because of both the monetary costs associated with employee turnover, as well as the potential impact on data quality. The Field Representative Exit Survey is used to collect data from a sample of our former current survey interviewers (field representatives) and Nonresponse Follow-up (NRFU) and Quality Check (QC) interviewers (enumerators) employed during census operations. The purpose of the survey is to determine the reasons for interviewer turnover and what the Bureau might have done or do to influence interviewing staff not to leave.

In addition to using form BC–1294 to collect data from field representatives who have left the Bureau, we will use Form BC–1294(D) to collect data from dress rehearsal and census enumerators on the factors that affected their decision as to whether to stay with an operation until it was completed. Since the nature of census enumerator work differs from current surveys interviewing (short term, intensive and concentrated work rather than continuing and diverse) we could not use the existing questionnaire, ''as-is.'' The questions and response choices on the BC–1294(D) have been tailored to census operations and are more in-depth, although they cover largely the same topics as the BC–1294. Additionally, questions about a supplemental pay plan are included on the BC–1294(D). The 1998 Dress Rehearsal is the Bureau's final opportunity to test its planned operations and procedures in a simulated census environment in preparation for the 2000 Census. Interviewer turnover is of heightened concern during a decennial census because of the short time periods for data collection operations. Because of this heightened concern, Form BC–1294(D) was recently added to this clearance.

The information collected via the survey will help the Census Bureau develop plans to reduce turnover in its current survey and decennial interviewing staff. This in turn should allow for better informed management decisions regarding the field work force and the implementation of more effective pay plans and interviewer training for both current and decennial interviewers. Prior research has suggested a need for a more flexible pay plan for the decennial interviewing staff in order to recruit sufficient number of interviewers and reduce turnover. As part of the 1998 Dress Rehearsal, the Census Bureau will be testing a supplemental pay plan in which pay rates are tied to the local labor market and based partially on interviewer performance and whether interviewers stay to complete their assignments. Questions on the experimental decennial pay plans asked of dress rehearsal enumerators will be used to determine the impact of the variable and supplemental pay rates on enumerator turnover as well as the impact and effectiveness of decennial enumerator training.

II. Method of Collection

The data will be collected by telephone. Interviews with former field representatives should take no more than five (5) minutes. Because of the in-depth nature of some of the questions on the BC–1294(D) and the additional questions on the experimental decennial pay plans, interviews with former NRFU and QC enumerators should take no more than fifteen (15) minutes. We estimate that interviews will be conducted with a total of 160 field representatives and about 2,500 enumerators on a yearly basis.

For former field representatives: Approximately every month, a sample of one-half of all interviewers who voluntarily resigned within the period will be contacted by telephone to complete a questionnaire.

For 1998 Dress Rehearsal enumerators: Beginning approximately two weeks after the start of NRFU and QC operations, all enumerators who have continuously been in a non-pay status for a period of two weeks will be contacted by telephone to complete a questionnaire.

III. Data

OMB Number: 0607–0404.

Form Number: BC–1294, BC–1294(D).

Type of Review: Regular Submission.

Affected Public: Former Bureau Interviewers (Field Representatives and Enumerators).

Estimated Number of Respondents: 160 Former Current Survey Interviewers; 2,500 Former Dress Rehearsal Enumerators.

Estimated Time Per Response: 5 minutes for former current survey interviewers; 15 minutes for dress rehearsal enumerators.

Estimated Total Annual Burden Hours: 13 hours for former current survey interviewers; 625 hours for dress rehearsal enumerators; Total is 638 hours.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 5 USC, Section 3101 and Title 13 USC Section 23.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–13171 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Procedure to Initiate an Investigation Under the Trade Expansion Act of 1962

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Margaret Cahill, Trade and Industry Analyst, Bureau of Export Administration (BXA), Department of Commerce, Room 3876, 14th and Constitution Avenue, NW, Washington, DC 20230 (telephone no. (202) 482–3795).

SUPPLEMENTARY INFORMATION:

I. Abstract

Upon request, the Department of Commerce shall initiate an investigation to determine the effects of imports of certain commodities on the national security, and will make the findings known to the President for possible adjustments to imports through tariffs. The findings are made publicly available and are reported to Congress. The purpose of this collection of information is to account for the public burden associated with submitting such a request from any interested party, including other government departments or by the Secretary of Commerce.

II. Method of Collection

In written form. A request or application shall describe how the quantity, availability, character and uses of a particular imported article, or other circumstances related to its import affect the national security.

III. Data

OMB Number: N/A.

Form Number: N/A.

Type of Review: Regular submission of a collection in use without OMB approval.

Affected Public: Businesses, other for-profit institutions, Federal Government.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 4.0 hours.

Estimated Total Annual Burden Hours: 8 hours.

Estimated Total Annual Cost: $480 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–13173 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Summit Marketing, Inc., Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Summit Marketing, Inc., 52 Blackburn Center, Gloucester, Massachusetts 01930.

On September 26, 1997, Summit Marketing, Inc. was convicted in the United States District Court for the District of Massachusetts on four counts of violating Section 38 of the Arms Export Control Act (currently codified at 22 U.S.C.A. § 2778 (1990 & Supp. 1998)) (the AECA). Specifically, Summit Marketing, Inc. was convicted of knowingly and willfully exporting and attempting to export defense articles to France, for transshipment to Iran, without obtaining the required export licenses from the Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any

[1] the Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997 (62 *Fed. Reg.* 43629, August 15, 1997), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1998)).

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730–774 (1997)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Summit Marketing, Inc.'s conviction for violating the AECA, and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Summit Marketing, Inc. permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of eight years from the date of its conviction. The eight-year period ends on September 26, 2005. I have also decided to revoke all licenses issued pursuant to the Act in which Summit Marketing, Inc. had an interest at the time of its conviction.

Accordingly, it is hereby

Ordered

I. Until September 26, 2005, Summit Marketing, Inc., 52 Blackburn Center, Gloucester, Massachusetts 01930, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may do, directly or indirectly, any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Summit Marketing, Inc. by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until September 26, 2005.

VI. A copy of this Order shall be delivered to Summit Marketing, Inc. This Order shall be published in the **Federal Register.**

Dated: May 11, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–13288 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Sanford B. Groetzinger; Order Denying Permission to Apply for or Use Export Licenses

In the Matter of: Sanford B. Groetzinger currently incarcerated at: Federal Correction Institute, Number 21423038, P.O. Box 7000, Fort Dix, New Jersey 08640, and with an address at: 82 Dennison Street, Gloucester, Massachusetts 01930.

On September 26, 1997, Sanford B. Groetzinger (Groetzinger) was convicted in the United States District Court for the District of Massachusetts on four courts of violating Section 38 of the Arms Export Control Act (currently codified at 22 U.S.C.A. 2778 (1990 & Supp. 1998)) (the AECA). Specifically, Groetzinger was convicted of knowingly and willfully exporting and attempting to export defense articles to France, for transshipment to Iran, without obtaining the required export licenses from the Department of State.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1997)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 comp. 501 (1996)), August 14, 1996 (3 CFR, 1196 Comp. 298 (1997)), and August 13, 1997 (62 FR 43629, August 15, 1997), continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1998)).

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Groetzinger's conviction for violating the AECA, and following consultations with the Acting Director, Office of Export Enforcement, I have decided to deny Groetzinger permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of eight years from the date of his conviction. The eight-year period ends on September 26, 2005. I have also decided to revoke all licenses issued pursuant to the Act in which Groetzinger had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until September 26, 2005, Sanford B. Groetzinger, currently incarcerated at Federal Correction Institute, Number 21423038, P.O. Box 7000, Fort Dix, New Jersey 08640 and with an address at 82 Dennison Street, Gloucester, Massachusetts 01930, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may do, directly or indirectly, any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Groetzinger by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-producted direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until September 26, 2005.

VI. A copy of this Order shall be delivered to Groetziner. This Order shall be published in the **Federal Register**.

Dated: May 11, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–13286 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 97–095R. *Applicant:* Stanford University, Stanford Medical Center, 300 Pasteur Drive, Room 5302, Palo Alto, CA 94304. *Instrument:* Ultrasound Bone Densitometer. *Manufacturer:* McCue Plc, United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of December 15, 1997.

Docket Number: 98–024. *Applicant:* University of Michigan, Transportation Research Institute, 2910 Baxter Road, Ann Arbor, MI 48109–2150. *Instrument:* (3) Sensor Sets, Model ODIN 4. *Manufacturer:* A.D.C. GmbH, Germany. *Intended Use:* The instrument is intended to be used in a scientific study in which vehicles equipped with these sensors will be driven by human subjects to evaluate the performance of headway control systems. *Application accepted by Commissioner of Customs:* April 21, 1998.

Docket Number: 98–025. *Applicant:* University of California, Berkeley, Berkeley CA 94720. *Instrument:* Electron Detector. *Manufacturer:* Gammadata/Scienta AB, Sweden. *Intended Use:* The instrument will be used in angle-resolved photoemission experiments with the objective of studying the electronic structure and physical properties of superconducting

materials. In addition, the instrument will be used to train graduate students in their thesis research. All results will be made public and published in scientific journals. *Application accepted by Commissioner of Customs:* April 30, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–13308 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Wisconsin-Madison, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 98–011. *Applicant:* University of Wisconsin-Madison, Stoughton, WI 53589. *Instrument:* Hydrostatic Leveling System. *Manufacturer:* Fogale-Nanotech, France. *Intended Use:* See notice at 63 FR 12451, March 13, 1998. *Reasons:* The foreign instrument provides measurements of vertical position from a group of remote sensors (using a water-level reference) with a range of measurement from 6.0 to 8.5 mm and a precision of 1 µm. *Advice received from:* Argonne National Laboratory, April 29, 1998.

Docket Number: 98–015. *Applicant:* Brown University, Providence, RI 02912. *Instrument:* Material Preparation and Crystal Growth System, Model MCGS5. *Manufacturer:* Crystallox, Ltd., United Kingdom. *Intended Use:* See notice at 63 FR 15831, April 1, 1998. *Reasons:* The foreign instrument provides crystal growth using cold crucible or Bridgman technique for materials with very high melting point using 50kW induction heating. *Advice received from:* National Aeronautics and Space Administration, May 5, 1998.

The Argonne National Laboratory and the National Aeronautics and Space Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–13310 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Texas at Austin; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–001. *Applicant:* University of Texas at Austin, Austin, TX 78712. *Instrument:* IR Image Furnace, Model SC–M35HD. *Manufacturer:* NEC Nichiden Machinery Ltd., Japan. *Intended Use:* See notice at 63 FR 8164, February 18, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides growth of oxide monocrystals using the traveling floating melt zone method. The National Aeronautics and Space Administration advised February 2, 1998 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–13309 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 98040112–8112–01]

American Lumber Standard Committee; Additional Memberships Approved

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology announces that the Secretary of Commerce approved the request of the American Lumber Standard Commtitee (''the Committee'') to allow membership for the National Lumber Grades Authority (NLGA) of Canada under Section 9.3.1 (rules-writing agencies) and for wood treaters under Section 9.3.3 (other interested and affected groups) of DOC Voluntary Product Standard PS 20–94 ''American Softwood Lumber Standard.''

ADDRESSES: Barbara M. Meigs, Office of Standards Services, National Institute of Standards and Technology, Room 164, Building 820, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Barbara M. Meigs, telephone: 301–975–4025, fax: 301–926–1559, e-mail: barbara.meigs@nist.gov.

SUPPLEMENTARY INFORMATION: Section 9.3.7 of DOC Voluntary Product Standard PS 20–94 ''American Softwood Lumber Standard,'' developed under procedures published by the Department of Commerce (15 CFR Part 10), provides that the Secretary of Commerce, upon request, may consider making additional appointments to the Committee to ensure that it has a comprehensive balance of interests.

On February 13, 1997, NIST published a notice in the Federal Register (62 FR 6761) announcing that it was considering a request received from the Committee. The Committee, after its annual meeting in December 1996, had sent a letter to NIST requesting that one voting membership for the NLGA of Canada and one for wood treaters be approved. NIST announced a 90-day comment period to allow for public comment on the recommendation.

During the comment period, which ended on May 14, 1997, one current and

one former member of the Committee submitted objections to the NLGA and wood-treaters memberships. On October 29, 1997, after considering the Committee's recommendation and the comments of those who responded to the Federal Register notice, the Secretary of Commerce approved the recommendation of the Committee to allow one principal member and one alternate to represent the NLGA under Section 9.3.1 of PS 20–94 and one principal member and one alternate to represent wood treaters under Section 9.3.3.

Authority: 15 U.S.C. 272.

Dated: May 8, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–13196 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Industrial Partnerships Program, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 97–026.

Title: Method and Apparatus for Diffraction Measurement Using A Scanning X-Ray Source.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and Digiray Corporation. The present invention relates to x-ray diffraction measurement by using moving x-ray source x-ray diffraction. The invention comprises a raster-scanned x-ray source, a specimen, a collimator, and a detector. The x-ray source is electronically scanned which allows a complete image of the x-ray diffraction characteristics of the specimen to be produced. The specimen is placed remote from the x-ray source and the detector. The collimator is located directly in front of the detector. The x-rays are diffracted by the specimen at certain angles, which cause them to travel through the collimator and to the detector. The detector may be placed in any radial location relative to the specimen in order to take the necessary measurements. The detector can detect the intensity and/or the wavelength of the diffracted x-ray. All information needed to solve the Bragg equation as well as the Laue equations is available. The x-ray source may be scanned electronically or mechanically. The present invention is used to perform texture analysis and phase identification.

NIST Docket Number: 96–042.

Title: High Strength Polymeric Networks Derived (Meth) Acrylate Resins With Organoflourine Content and Process For Preparing Same.

Abstract: Disclosed are fluorinated materials for use in dental uses and non-dental uses, e.g., adhesives or coatings. Multifunctional monomers and prepolymers with pendant (meth) acrylate groups were prepared from epoxide-ring-opening reactions. Resins based on the fluorinated monomers and prepolymers with diluent comonomers, were photocured as composites with particulate fillers. Fluorine contents of the prepolymers ranged from 15 to 65%. Composites with high transverse strength (up to 120 MPa), low water sorption (as low as 0.11 mass %) and extremely low polymerization shrinkage (as low as 3.4% by volume) were obtained. The fluorinated resins may be employed to produce hydrophobic dental composite materials with high strength and low polymerization shrinkage.

NIST Docket Number: 96–038US.

Title: Fractional Phase Measurement By Polarization-Dependent Spectroscopy.

Abstract: The invention provides an inexpensive, noninvasive optical method of quantitatively determining the volume fraction of anisotroic material in a mixture of anisotropic and isotropic material, and more particularly for determining the volume fraction of noncubic crystalline material in a mixed-phase specimen having noncubic crystalline material intermixed with cubic crystalline material. Polarized light is impinged on the specimen and the reflectance or transmission difference between two orthogonal polarizations directions is measured. In cubic regions the reflectance or transmission is the same along both polarization directions so the contributions to the difference cancel, leaving a signal only from the noncubic regions. The optical difference can be measured as a function of wavelength and critical points in the band structure, including the band gap, can be profiled. From the band structure the film composition can be determined. This measurement is particularly suited to measuring III–V nitride semiconductor specimens having regions with zincblende symmetry mixed with regions of wurtzite symmetry.

NIST Docket Number: 96–025

Title: Broadband, Ultrahigh-Sensitivity Chemical Sensor Based on Intra-Cavity Total Reflection.

Abstract: This NIST invention permits broadband, ultra-sensitive measurement of optical absorption for any state of matter by the cavity ring-down technique using a small, monolithic, total internal reflection ring cavity. It significantly advances the sensitivity, accuracy, and adaptability of optical absorption spectroscopy for decisive qualitative and quantitative chemical analysis, with greatly increased trace analysis capability.

NIST Docket Number: 95–022.

Title: A Time Stamp Service for the National Information Network.

Abstract: This NIST invention consists of a method for applying a signed time-stamp to a document in digital format for the purpose of proving that the document existed on the date it was signed. Any digital-format document can be signed including simple text files, binary files, scanned images, etc. The document can be encrypted or encoded. The time-stamp is accurate to a few milliseconds, and the accuracy is directly traceable to UTC(NIST) in real-time. The signed document can be returned to the sender electronically and the document can also be forwarded automatically to any number of third parties provided only that the third parties are capable of receiving electronic mail.

Dated: May 12, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–13194 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, June 2, 1998, Wednesday, June 3, 1998, and Thursday, June 4, 1998, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on June 2–4, 1998, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, Maryland in the Administration Building in Lecture Room A.

Agenda

- Welcome and Overview.
- Issues Update and Briefings.
- Computer Security Legislation Updates.
- Information Security Briefing.
- Privacy Issues Briefings.
- Crytography Policy Updates.
- Discussion.
- Pending Business.
- Public Participation.
- Agenda Development for September Meeting.
- Wrap-Up.

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than May 29, 1998. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: May 8, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–13195 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Northeast Region Survey of Intent and Capacity To Process Fish and Shellfish

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 17, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Clay Heaton, Mid-Atlantic Fishery Management Council (MAFMC), 300 South New Street, Dover, Delaware 19901–6790, (302) 674–2331.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Fishery Management Plans for Atlantic Surf Clams and Ocean Quahogs, and Atlantic Mackerel, Squid, and Butterfish include requirements that the National Marine Fisheries Service and/or the MAFMC survey domestic processors and joint venture operators annually to establish industry capacity to utilize the managed species.

A survey, required under the squid, mackerel and butterfish regulations at 50 CFR 648.21(b), is used to establish the intent and capacity of the US industry to utilize allowable harvest in a given year. If the US industry is unable to fully utilize the allowed harvest of Atlantic mackerel, the excess may be used in establishing levels of catch for joint ventures and/or direct foreign harvest .

A survey, required under the surf clam and ocean quahog regulations at 50 CFR 648.7(a)(2)(ii), is used to obtain data for use in monitoring present processing activities and estimating future production at the processing plant level. As in previous years, this information is obtained annually through a telephone survey.

Both surveys seek information concerning annual capacity to process theses species; historical amount of product processed; and quantity of product to be processed in the future.

II. Method of Collection

Written and telephone surveys.

III. Data

OMB Number: 0648–0235.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 54.

Estimated Time Per Response: 15 minutes for the Atlantic mackerel, squid, and butterfish survey; 5 minutes for the Atlantic Surf Clam and ocean quahog survey.

Estimated Total Annual Burden Hours: 10 hours.

Estimated Total Annual Cost to Public: $0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Dated: May 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–13174 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Surf Clam/Ocean Quahog ITQ Transfer Form; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Myles Raizin, NMFS, 1 Blackburn Drive, Gloucester, MA, 01930, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

I. Abstract

Amendment 8 to the Fishery Management Plan for Surf Clams and Ocean Quahogs (FMP) implemented an individual transferable quota (ITQ) system for both fisheries. The FMP, under 50 CFR § 648.70 (b), requires the Regional Administrator, NMFS, Northeast Region, to approve both permanent and temporary transfers of allocations. The Surf Clam/Ocean Quahog ITQ Transfer Form (Form) serves as the official application to the Regional Administrator to effect these transfers. The Form requires names of the transferor and transferee and their respective allocation numbers, and number of 32-bushel cages transferred and corresponding cage tag numbers. New applicants must furnish vessel name, owner name, address, and telephone number, and NMFS will assign them an allocation number. Both the transferor and transferee must sign the form.

II. Method of Collection

Written application.

III. Data

OMB Number: 0648–0238.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 206.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 52 hours.

Estimated Total Annual Cost to Public: $0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–13175 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Application to Shuck Surf Clams/ Ocean Quahogs at Sea; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 20, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Myles Raizin, NMFS, 1 Blackburn Drive, Gloucester, MA, 01930, (978)281–9104.

SUPPLEMENTARY INFORMATION:

I. Abstract

Amendment 8 to the Fishery Management Plan for Surf Clams and Ocean Quahogs (FMP) implemented a requirement for vessel owners that desire to use their vessels for shucking either surf clams or ocean quahogs at sea to submit an Application to Process Surf Clams/Ocean Quahogs at Sea (Application) to the Regional Administrator, NMFS, Northeast Region (Regional Administrator). The contents of the application are specified at 50 CFR 648.74(a)(2) and include: Name and address of the applicant, permit number of the vessel, method of calculating the amount of surf clams or ocean quahogs harvested in the shell, vessel dimensions and accommodations, and length of fishing trip. Upon receipt of the application, the Regional Administrator may allow the shucking of surf clams or ocean quahogs at sea if he/she determines that an observer carried aboard the vessel can measure accurately, in bushels, the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking. The calculation of bushels is extremely important since the fisheries operate under a system of individual transferable quotas which are defined in 32-bushel units.

II. Method of Collection

Written application.

III. Data

OMB Number: 0648–0240.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 2 hours.

Estimated Total Annual Cost to Public: $0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 13, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–13176 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

May 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: May 19, 1998

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased by recrediting unused carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 66054, published on December 17, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 12, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the period January 1, 1998 through December 31, 1998.

Effective on May 19, 1998, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing (ATC):

Category	Adjusted limit [1]
Levels in Group I	
336/836	68,874 dozen.
339	1,559,066 dozen.
340	354,068 dozen.
341	228,367 dozen.
342	103,312 dozen.
345	61,107 dozen.
347/348/847	839,444 dozen.
351/851	78,849 dozen.
359–V [2]	137,751 kilograms.
638/639/838	1,916,176 dozen.
659–S [3]	137,751 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt. [4], 464, and 469pt. [5], as a group.	1,526,865 square meters equivalent.
Sublevel in Group II	
445/446	82,315 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–13179 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

May 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 64361, published on December 5, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 12, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on May 19, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	1,621,830 dozen.
338/339	2,587,680 dozen.
347/348	2,349,631 dozen.
638/639	1,916,606 dozen.
847	740,049 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–13180 Filed 5–18–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Application of the Chicago Mercantile Exchange for Designation as a Contract Market in Pork Composite Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in pork composite futures and options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before June 18, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME pork composite futures and options contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on May 12, 1998.

Steven Manaster,

Director.

[FR Doc. 98–13242 Filed 5–18–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed Collection; Comment Request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 20, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early

opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 13, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.
Title: An Evaluation of the Comprehensive Regional Assistance Centers.
Frequency: One time.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 2,620.
Burden Hours: 1,140.
Abstract: This evaluation will describe the work of the Comprehensive Centers, identify particularly promising strategies and assess the availability, quality, and effectiveness of the Centers' services. Recipients and non-recipients of Center services will be surveyed, and Center staff, staff of partner organizations, and ED staff will be interviewed.

[FR Doc. 98–13206 Filed 5–18–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 18, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 13, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Common Core of Data Surveys.
Frequency: Annually.
Affected Public: Federal Government; State, local or Tribal Gov't, SEAs or LEAs.
Reporting Burden and Recordkeeping:
Responses: 57.
Burden Hours: 10,901.
Abstract: The Common Core of Data Surveys collect data annually from state education agencies about students and staff involved in the public elementary and secondary education system: membership, number of graduates and dropouts, and staff employed in instruction, administration, and support. The surveys also collect information about school and agency characteristics, and revenues and expeditures for public elementary and secondary education.

[FR Doc. 98–13207 Filed 5–18–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Objective Merit Review of Discretionary Financial Assistance Applications

AGENCY: Department of Energy.

ACTION: Notice of Objective Merit Review Procedure.

SUMMARY: This Notice establishes the procedure followed by program and regional support offices under the purview of the Assistant Secretary for Energy Efficiency and Renewable Energy (ASEE) in conducting the objective merit review of discretionary financial assistance applications.

EFFECTIVE DATE: May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy A. Martin, Office of Energy Efficiency and Renewable Energy, EE–60, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–9108.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Department of Energy (DOE) today gives notice of the procedure for the objective merit review of discretionary financial assistance in the Offices of the Assistant Secretary for Energy Efficiency and Renewable Energy. Financial assistance is provided, in the form of a grant or cooperative agreement, when the principal purpose of the transaction is the transfer of money or property to accomplish a public purpose of support or stimulation as authorized by Federal statute. Discretionary financial assistance is financial assistance provided under a federal statute which authorizes DOE to select the recipient and the project to be supported and to determine the amount to be awarded. This differs from a procurement, which refers to instruments used when the principal purpose of the transaction is the acquisition of supplies or services for the direct benefit of the Government. The procedure implements the objective merit review provisions of the DOE Financial Assistance Rules in (10 Code of Federal Regulations (CFR), § 600.13).

II. Applicability of Notice

The procedure covers the evaluation of all discretionary financial assistance applications within the programs of the DOE Office of Energy Efficiency and Renewable Energy and apply to both solicited and unsolicited applications.

III. Distinction Between Solicited and Unsolicited Proposals

Solicited proposals are direct responses by interested organizations or individuals to published requests issued by DOE for the submission of applications for discretionary financial assistance awards. Solicited proposals are awarded on a competitive basis using the criteria set forth in 10 CFR 600.8. When a proposal is submitted solely on the proposer's initiative and the idea, method or approach which would not be eligible for assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would not be appropriate, the proposal is considered an unsolicited proposal. Unsolicited proposals are awarded on a noncompetitive basis using the criteria set forth in 10 CFR 600.6 (c). The two types of proposals are treated differently, as described in paragraph IV. (c), below.

IV. Objective Merit Review Procedure

(a) *Definition and Purpose.* Merit review is the process of evaluating applications for discretionary financial assistance using established criteria. The review is thorough, consistent and independent and is completed by individuals knowledgeable in the field of endeavor for which support is requested. The purpose of the review is to provide advice on the technical and cost-related merits of applications to the Selection Official with decision-making authority over the award of discretionary financial assistance.

(b) *Basic Review Standards.* (1) Initial Review. All financial assistance applications received by EE will be assigned to the respective EE program official who will initially review the document(s) for conformance with the technical and administrative requirements stated in the program rule, notice or solicitation and funding availability. (2) Evaluation. Applications which pass the initial review will be evaluated in accordance with stated evaluation criteria set forth in the program rule, notice, solicitation, or, where appropriate, the unsolicited proposal criteria. Those applications not meeting the evaluation criteria of the program rule, notice, solicitation, or the unsolicited proposal may be returned to the sender to be corrected or modified/supplemented by the sender. Those applications judged to be so inadequate that an evaluation is not warranted will be returned to the sender.

(c) *Criteria for Merit Review.* Applications which pass the initial review and meet the evaluation criteria set forth in the program rule, notice or solicitation are subjected to an objective merit review for discretionary financial assistance. The criteria used for the evaluation of solicited applications must be clearly stated in the solicitation along with the relative importance given to each criterion. The criteria, and other mandatory information specified in 10 CFR 600.8, must be in the solicitation. If an unsolicited proposal is initially favorably evaluated against program/policy factors, it should be considered for an objective merit review for discretionary financial assistance. The criteria used for the evaluation of unsolicited proposals is set forth in 10 CFR 600.6 (c).

(d) *The Merit Review Committee.* (1) The ASEE has the ultimate responsibility for appointments to a merit review committee (the Committee). The ASEE may delegate the appointment authority and decision-making authority (Selection Official function) to Deputy Assistant Secretaries (DAS), Office Directors and Regional Support Office Directors.

(2) The Committee, whether a standing committee or other review committee, shall be comprised of three or more professionally and technically qualified persons. The committee members may be a mixture of federal and non-federal experts. Non-Federal members shall be selected on the basis of their professional qualifications and expertise.

(3) Members of the merit review committee should exclude anyone who, on behalf of the Federal Government, performs any of the following functions:

(i) Providing substantial technical assistance to the applicant;

(ii) Approving/disapproving or having any decision-making role regarding the application;

(iii) Serving as the Contracting Officer (CO) or performing business management functions for the project;

(iv) Auditing the recipient for the project; or

(v) Exercising line authority over anyone ineligible to serve as a reviewer because of the above limitations.

(4) The Selection Official must appoint one member of the merit review committee to serve as chairperson. The chairperson is responsible for:

(i) Obtaining signed certificates of confidentiality from all committee members;

(ii) Preparing the written summary of the evaluation and recommendations for the Selection Official for the applicant's file; and

(iii) Performing the merit review duties of a regular committee member.

(5) The nature of EE's program solicitations will dictate the feasibility of using standing or ad hoc committees. When solicitations are generally being issued to meet specific program objectives with time or subject limitations, EE program offices will use ad hoc committees. Ad hoc committees are also appropriate under the following circumstances:

(i) For small numbers of applications received intermittently;

(ii) For programs of short duration, usually under one year;

(iii) To supplement review by standing committees when the volume of applications is usually large, and for applications with special review requirements.

(6) The regular use of ad hoc committees does not preclude the use of standing committees under the following circumstances:

(i) When required by legislation,

(ii) When a sufficient number of applications on a specific topic are received regularly and there is a sufficient number of qualified experts willing to serve on the committee for a prolonged tenure; and

(iii) When the legislative authority for the particular program involved extends for more than one year.

(7) Field readers may be used as an adjunct to a review committee. Field readers must be fully briefed by the designated Contract Officer's Representative so as to understand the process, including the review criteria, the weight given each criterion, and the fact that any criteria not specified in the solicitation are not to be used to evaluate the applications. The field readers must sign a certificate of confidentiality, as provided in 10 CFR 600.13(d). Field readers should follow, as closely as possible, the procedures that would have been used by a standing committee.

(e) Conflict of Interest. Members of the review committee must act in a manner consistent with 10 CFR 1010.101. Reviewers who do not meet these requirements shall not review, discuss, or make recommendations concerning the application. Review committee members with a conflict of interest shall also absent themselves from all meetings in which the application in question is discussed.

(f) Authorized Uses of Information. The review committee must act in a manner consistent with 10 CFR 600.15 when dealing with applications containing trade secrets, privileged, confidential commercial, and/or financial information, unless the information is unrestricted information available from other sources.

(g) Authority Beyond Evaluation. The Selection Official may decide not to accept a proposal that receives a favorable recommendation from the merit review committee due to policy or program factors. The explanation for the decision not to accept a recommendation from the merit review committee must be documented in writing for the applicant's file and must be prepared and signed by the ASEE or his/her designee.

(h) Written Evaluation Summary. Upon request, applicants are to be furnished a written summary of the evaluation of their application.

V. Deviations

If an EE program office wants to deviate from these procedures for merit review of an application or a class of applications, but will still follow the rules of 10 CFR 600.13, that office must obtain written permission from the ASEE. Permission to use procedures which deviate from 10 CFR 600 must be requested in writing to the responsible DOE Contracting Officer in accordance with 10 CFR 600.4. The Head of Contracting Activity has the authority to approve such procedures for a single case deviation, while the DAS for Procurement and Assistance Management has the authority to approve a class deviation. A deviation may be authorized only upon written determination that the deviation is necessary for any of the reasons set forth in 10 CFR 600.4 (b).

VI. EE Selection Process

Selection of applications for discretionary financial assistance will be based on the Selection Officials' acceptance of the merit review committees' recommendations and the findings of a separate programmatic review of program/policy factors relevant to EE's mission.

Issued in Washington, D.C., on May 13, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–13244 Filed 5–18–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–17; Innovations in Magnetic Fusion Energy Diagnostic Systems

AGENCY: Office of Energy Research, U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Energy Research, U.S. Department of Energy (DOE) announces its interest in receiving grant applications for innovative research in magnetic fusion energy diagnostic systems. Research projects are sought that are unique, first of a kind, and provide new scientific insights. Applications for implementation of an *established* diagnostic technique on existing or planned facilities should *not* be submitted in response to this Notice. Successful applications will be funded in FY 1999.

DATES: To permit timely consideration for awards in Fiscal Year 1999, applications submitted in response to this notice must be received no later than 4:30 p.m., August 4, 1998. No electronic submissions of formal applications will be accepted.

ADDRESSES: Completed formal applications referencing Program Notice 98–17 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 98–17. The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Darlene Markevich, ER–55 GTN, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–4920 or 3287, or by Internet address, darlene.markevich@mailgw.er.doe.gov.

SUPPLEMENTARY INFORMATION: The Office of Fusion Energy Sciences is interested in receiving applications for innovative diagnostic systems that have the possibility of leading to improved understanding of plasma behavior in tokamaks, innovative confinement concepts, and burning plasma experiments. Research projects are sought that are unique, first of a kind, and provide new scientific insights. Although the main thrust of this initiative is for experimental work, consideration will be given to applications that are directed at a short-term scientific assessment of new diagnostic concepts that are not ready for extensive experimental investigation. Applications for the implementation of an established diagnostic technique on existing or planned facilities should not be submitted in response to this Notice. Also, applications for theory/modeling investigations or initiatives in Inertial Fusion Energy should not be submitted in response to this Notice.

In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce experimental results within three to five years after grant initiation. Except for assessment applications, the detailed description of the proposed project should contain the following items: (1)

A detailed experimental research plan; (2) The specific results or deliverable expected at the end of the grant period; (3) The goal of the experiment; (4) A synopsis of the experimental program plan; (5) Adequacy of the facilities and budget; and (6) A proposed outline on how the diagnostic will be carried to a proof-of-principle (POP) demonstration. An estimated budget for POP demonstration must be included if the POP would be carried out after the end of the normal 3-year project period for a grant.

Applications concerned with scientific assessment of new diagnostic techniques that are not ready for experimental investigation should have a well-defined scope and a duration of no more than six months. These applications will be considered non-renewable. The product of such an assessment would be a clear scientific description of the diagnostic concept, the knowledge of fusion plasma behavior that would be gained from the diagnostic, and a critical analysis of major difficulties to be overcome in developing the concept.

Program Funding

It is anticipated that up to a total of $600,000 of Fiscal Year 1999 Federal funds will be available for new awards resulting from this Notice. Multiple-year funding of grant awards is anticipated, contingent upon the availability of funds. It is intended to support the research through proof-of-principle implementation on an existing fusion facility, consistent with availability of funds. However, future-year funding will depend on suitable experimental progress and the availability of funds. Because of the total amount of anticipated available funding and because of the intent to have a broadly based program, experimental applications with an annual requirement in any year in excess of $300,000 are unlikely to be funded. The cost-effectiveness of the application will be considered when comparing applications with different funding requirements. Applications for scientific assessment of new concepts will be limited to a maximum of $50,000. DOE reserves the right to fund in whole or part any or none of the applications received in response to this Notice.

A parallel request for Field Work Proposals will be issued to DOE Federally Funded Research and Development Centers (FFRDCs). All projects will be evaluated using the same criteria, regardless of the submitting institution.

Collaboration

Applicants to this Notice are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories, and FFRDCs, including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

An individual may be named as primary principal investigator on only one application submitted in response to this Notice. It is permissible, however, for the same principal investigator to be named as a co-principal investigator on one other application submitted in response to either this Notice, or the corresponding request for Field Work Proposals for this initiative. Collaborative projects involving several research groups at more than one institution may receive larger awards if merited. The program will be competitive and offered to investigators in universities or other institutions of higher education, other non-profit or for-profit organizations, non-Federal agencies or entities, or unaffiliated individuals.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which includes another organization as a lower-tier participant (subcontract) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. A separate Face Page and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic applicants who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subcontract). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for their portion of the project. The FFRDC must include separate Budget Pages for their portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically designated for new FFRDC projects. DOE FFRDCs will not compete for funding already designated for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Application Format

To enable all reviewers to read all applications, the application must be limited to a maximum of twenty (20) pages (including text and figures), plus not more than one page each of biographical information and publications of the principal investigator, plus any additional forms required as a part of the standard grant application.

An original and seven copies of each application must be submitted. Due to the anticipated number of reviewers, it would be helpful for each applicant to submit an additional five copies of each application.

Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR Part 605:

1. Scientific and/or technical merit of the project;

2. Appropriateness of the proposed method or approach;

3. Competency of the applicant's personnel and adequacy of the proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

In addition to peer review, funding decisions will be based on program policy factors, such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and

procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR Part 605. Electronic access to the Application Guide is possible via the Internet using the following Web site address: http://www.er.doe.gov/production/grants/grants.html

References for Background Information

In order to assist the potential applicant under this Notice, the summary of a recent workshop that addressed measurement needs in fusion devices is provided on the World Wide Web at: http://wwwofe.er.doe.gov/more—html/pdffiles/diag.pdf The summary is intended as background information on measurement needs. New diagnostic techniques that address these measurements are the ones most likely to be considered for funding under this Notice. However, new diagnostic techniques that address other measurements in fusion plasmas will also be considered for funding under this Notice.

For those without access to the World Wide Web, hard copies of the workshop summary may be obtained by contacting Mr. John Sauter at (phone) 301–903–3287, (fax) 301–903–4716, or in writing at U.S. Department of Energy, Office of Energy Research, ER–55, 19901 Germantown Road, Germantown, MD 20874–1290.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC, on May 8, 1998.

Ralph H. DeLorenzo,

Acting Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–13243 Filed 5–18–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2645–000]

Alliant Services, Inc., IES Utilities Inc., et al.; Notice of Filing

May 13, 1998.

Take notice that on April 20, 1998, Alliant Services, Inc. (Alliant), on its own behalf and on behalf of IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light Company, South Beloit Water, Gas & Electric Company, Heartland Energy Services and Industrial Energy Applications, Inc. (the IEC Operating Companies), submitted as a compliance filing the System Coordination and Operating Agreement Among IES, IPC, WPL and Alliant and Alliant's Order No. 888–A open access transmission tariff. The filings were made in response to the Commission's Opinion No. 419 approving the merger of the companies. The filings are proposed to take effect on April 21, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before May 22, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–13199 Filed 5–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–512–000]

Destin Pipeline Company, L.L.C.; Notice of Application

May 13, 1998.

Take notice that on May 4, 1998, Destin Pipeline Company, L.L.C. (Destin), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP98–512–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to construct and operate a pipeline extension and appurtenant facilities in the Mississippi Canyon area of the Gulf of Mexico, to serve as gas supply facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Destin proposes to install and operate approximately 31 miles of 24-inch lateral pipeline from Chevron USA Inc.'s (Chevron) Viosca Knoll Block 900 Platform to a sub-sea tie-in to be located near the Main Pass Block 279 Platform, all in Federal Waters, Gulf of Mexico, and appurtenant facilities including a pig launcher and measurement facilities. It is stated that the facilities are designated the Gemini Expansion Facilities and are being installed to gain access to a supply of natural gas from a new deep water prospect named Gemini in Mississippi Canyon Area Blocks 247, 291, and 292. It is asserted that Texaco Exploration and Production Inc. and Chevron have signed agreements with Destin for the transportation of up to 180 Mmcf of gas per day from the Gemini gas supply under Destin's Rate Schedule F–2.

Destin proposes to own, operate and maintain the facilities as part of its pipeline system and to finance the cost of $37.2 million. Destin requests rolled-in rate treatment for the cost of the facilities, asserting that they will be an integral part of its system. Destin requests Commission authorization by July 31, 1998, in order to have the proposed facilities placed in service by March, 1999.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 3, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Destin to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–13202 Filed 5–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4715–012]

Felts Mills Energy Partners, L.P.; Notice Dismissing Request for Rehearing

May 13, 1998.

On March 17, 1998, the Director, Office of Hydropower Licensing, issued an order granting to the licensee for the Felts Mills Project No. 4715 an extension of time to comply with the requirements of Articles 205 and 405 of its license. On April 17, 1998, New York Rivers United filed a request for rehearing of the Director's order.

Rule 713 of the Commission's Rules of Practice and Procedure provides that rehearing may be sought only with respect to a ''final Commission decision or other final order.'' [1] The Director's order in this case, allowing the licensee additional time to submit its plan and aperture cards, is interlocutory, and is not therefore subject to rehearing.[2] Accordingly, New York Rivers United's request for rehearing is dismissed.[3]

This notice constitutes final agency action. Requests for rehearing by the Commission of this dismissal notice may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–13201 Filed 5–18–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.713(b).

[2] *See e.g.*, Wisconsin Valley Improvement Company, 80 FERC ¶ 61,319 (1997).

[3] Even if the rehearing request had not been interlocutory, it would have to be dismissed since a request for rehearing may be filed only by a party to the proceeding. With regard to post-licensing proceedings, the Commission only entertains motions to intervene where the filings at issue entail material changes in the plan of project development or in the terms and conditions of the license, or could adversely affect the rights of property-holders in a manner not contemplated by the license. *See* Kings River Conservation District, 36 FERC ¶ 61,365 (1986). Such was not the case here. Thus, notice of this proceeding was not issued, and motions to intervene were not entertained.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2498–000]

Public Service Company of New Mexico; Notice rescinding prior notice

May 11, 1998.

Take notice that on May 12, 1998, The **Federal Register** published a notice in the above-captioned docket (63 FR 26181). By this notice, the prior notice is hereby rescinded.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–13200 Filed 5–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–515–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

May 13, 1998.

Take notice that on May 4, 1998, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP98–515–000, a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a sales tap for Frontier Energy (Frontier), a North Carolina natural gas local distribution and transmission pipeline company, under Trancso's blanket certificate issued in Docket No. CP82–426–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that the sales tap would consist of two six-inch valve tap assemblies, a meter station with two six-inch meter runs and other appurtenant facilities near milepost 1308.45 on Transco's mainline in Rowan County, North Carolina. Transco further states that Frontier would construct, or cause to be constructed, appurtenent facilities as part of a new ''greenfield'' natural gas distribution project to enable it to receive gas from Transco at the sales tap and redeliver the gas to serve several counties in northwestern North Carolina which do not have current access to natural gas.

Transco also states that the new sales tap would be used by Frontier to receive up to 45,000 dekatherms of gas per day from Transco. It is stated that the gas delivered through the new sales tap would be received by Frontier for redeliveries in its capacity as a new local distribution company. Transco states that Frontier is not currently a transportation customer of Transco. It is further stated that upon completion of the sales tap, Transco would commence transportation service to Frontier pursuant to Transco's Rate Schedules FT–R or IT and Part 284(G) of the Commission's regulations. Moreover, Transco states that Frontier may have access in the future to Rate Schedule FT service in the event Frontier becomes a replacement shipper for a permanent release of firm capacity or if new firm capacity becomes available through an expansion of Transco's system. Transco states that the addition of the sales tap would have no significant impact on Transco's peak day or annual deliveries, and is not prohibited by Transco's FERC Gas Tariff.

Transco further states that the estimated total costs of Transco's proposed facilities would be approximately $474,000. It is also stated that Frontier would reimburse Transco for all costs associated with such facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–13203 Filed 5–18–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11480–001–Alaska]

Haida Corporation; Notice of Teleconference

May 13, 1998.

A telephone conference will be convened by staff of the Office of Hydropower Licensing on June 2, 1998, at 1 p.m. eastern time (10 a.m. Pacific time and 9 a.m. Alaska time). The purpose of this meeting is to discuss the status of the Commission's March 5, 1998, information requests, and any other outstanding topics on the Reynolds Creek Hydroelectric Project. The project is proposed to be constructed and operated on Prince of Wales Island, near the community of Hollis, Alaska.

Any person wishing to participate in this teleconference should contact Carl Keller at (202) 219–2831 or e-mail at carl.keller@ferc.fed.us no later than May 28, 1998, so that appropriate arrangements can be made.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–13204 Filed 5–18–98; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2277]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

May 13, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed by June 3, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Toll Free Service Access Codes (CC Docket No. 95–155).

Number of Petitions Filed: 4.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–13169 Filed 5–18–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending); (2) Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing); (3) Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Fund Transfers); and (4) Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

DATES: Comments must be submitted on or before July 20, 1998.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located of F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, as the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).

OMB Number: 3064–0082.

Frequency of Response: On occasion.

Affected Public: Any businesses or individuals that regularly offer or extend consumer credit.

Estimated Number of Respondents: 6,100.

Estimated Time per Response: 787.

Estimated Total Annual Burden: 4,800,700 hours.

General Description of Collection: Regulation Z (12 CFR 226) prescribes uniform methods of computing the cost of credit, disclosure of credit terms, and procedures for resolving billing errors on certain credit accounts. Regulation Z is issued by the Board of Governors of the Federal Reserve System (''FRB'') under the authority of Title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having the enforcement responsibilities in the case of insured nonmember banks.

2. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

OMB Number: 3064–0083.

Frequency of Response: On occasion.

Affected Pubic: Any businesses engaging in consumer leasing.

Estimated Number of Respondents: 6,100.

Estimated Time per Response: 4.

Estimated Total Annual Burden: 24,400 hours.

General Description of Collection: Regulation M (12 CFR 2123) implements the consumer leasing provisions of the Truth in Lending Act. Regulation M is issued by the Board of Governors of the Federal Reserve System (''FRB'') under the authority of Title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). Section 105 of the Act (15 U.S.C. 1604) designates the FRB as the issuer of the implementing regulations, and section 108(a) of the Act (15 U.S.C. 1607) designates the FDIC as having the enforcement responsibilities in the case of insured nonmember banks.

3. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Fund Transfers).

OMB Number 3064–0084.

Frequency of Response: On occasion.

Affected Public: Any users of the electronic fund transfer system.

Estimated Number of Respondents: 6,100.

Estimated Time per Response: 120.4.

Estimated Total Annual Burden: 734,440 hours.

General Description of Collection: Regulation E (12 CFR 205) establishes the rights liabilities, and responsibilities of parties in electronic funds transfers (''EFT'') and protects consumers using EFT systems. Regulation E is issued by the Board of Governors of the Federal Reserve System (''FRB'') under the authority of Title IX of the Consumer Credit Protection Act (15 U.S.C. 1693.) Section 904 of the Act (15 U.S.C. 1693b) designates the FRB as the issuer of the implementing regulations, and section 917(a) of the Act (15 U.S.C. 1693o) designates the FDIC as having the enforcement responsibilities in the case of insured nonmember banks.

4. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

OMB Number: 3064–0085.

Frequency of Response: On occasion.

Affected Public: Any financial institution engaging in credit transactions.

Estimated Number of Respondents: 6,100.

Estimated Time per Response: 43.

Estimated Total Annual Burden: 262,300 hours.

General Description of Collection: Regulation B (12 CFR 202) prohibits creditors from discriminating against applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information, and requires creditors to give applicants a written notification of rejection of an application. Regulation B is issued by the Board of Governors of the Federal Reserve System (''FRB'') under the authority of Title VII of the Consumer Credit Protection Act (15 U.S.C. 1691). Section 703 of the Act (15 U.S.C. 1691b) designates the FRB as the issuer of the implementing regulations, and section 704(a) of the Act (15 U.S.C. 1691c) designates the FDIC as having the enforcement responsibilities in the case of insured nonmember banks.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 13th day of May, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–13164 Filed 5–18–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Lincoln and Union Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–13279 Filed 5–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1209–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1209–DR), dated March 11, 1998, and related determinations.

EFFECTIVE DATE: May 11, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 11, 1998:

Lincoln and Union Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–13280 Filed 5–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1217–DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1217–DR), dated May 8, 1998, and related determinations.

EFFECTIVE DATE: May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 8, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from a severe winter storm on March 9–12, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gary Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Jasper, Lake, LaPorte and Porter Counties for Public Assistance.

All counties within the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 98–13305 Filed 5–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1216–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–1216–DR), dated April 29, 1998, and related determinations.

EFFECTIVE DATE: May 10, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 10, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–13282 Filed 5–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1216–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1216–DR), dated April 29, 1998, and related determinations.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 29, 1998:

Leslie County for Individual Assistance (already designated for Public Assistance)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–13306 Filed 5–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1215–DR]

Tennessee; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1215–DR), dated April 20, 1998, and related determinations.

EFFECTIVE DATE: May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1998:

Polk and Shelby Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–13281 Filed 5–18–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting; Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: May 31 and June 1, 1998.

Place: Renaissance Waverly Hotel, 2450 Galleria Parkway, Atlanta, GA 30339.

Times: 9 am–6 pm on Sunday and 1 pm–5 pm on Monday.

Proposed Agenda

1. Call to order.
2. Announcements.
3. Action on minutes of previous teleconference.
4. Discuss priorities for FEMA's Map Modernization plan.
5. Develop format for the Council's 1998 annual report.
6. Report on elevation certificate.
7. Discuss Letter of Map Amendment recommendations.
8. Discuss hydraulics and its relationship to hydrology.
9. Adjournment.

FOR FURTHER INFORMATION CONTACT: Michael Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Sally Magee, Federal Emergency Management Agency, 500 C Street SW., room 444, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596 on or before May 27, 1998.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting on September 10 and 11, 1998.

Dated: May 11, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–13304 Filed 5–18–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Rex K. Alexander, Tulsa, Oklahoma, and Ronald F. Tanner, Cornville, Arizona; to acquire voting shares of BOC Bancshares, Inc., Chouteau, Oklahoma, and thereby indirectly acquire voting shares of Bank of Commerce, Chouteau, Oklahoma.

Board of Governors of the Federal Reserve System, May 14, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–13317 Filed 5–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Higginsville Bancshares, Inc., Higginsville, Missouri, and thereby indirectly acquire First State Bank of Higginsville/Odessa, Higginsville, Missouri.

2. Diamond Bancorp, Inc., Washington, Missouri; to acquire an additional 1.47 percent, for a total of

5.87 percent, of the voting shares of Cardinal Bancorp II, Inc., St. Louis, Missouri, and thereby indirectly acquire United Bank of Union, Union, Missouri.

Board of Governors of the Federal Reserve System, May 14, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–13316 Filed 5–18–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. FirstMerit Corporation, Akron, Ohio; to acquire Security First Corp., Mayfield Heights, Ohio, and thereby indirectly acquire Security Federal Savings & Loan Association of Cleveland, Cleveland, Ohio, and First Federal Security Bank of Kent, Kent, Ohio, and thereby engage in permissible savings and loan activities, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 14, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–13318 Filed 5–18–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Consultation Services for Ship Construction and Renovation

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces fees for conducting voluntary inspections of newly constructed or renovated cruise ships. This notice also announces a change in the proposal to charge a fee for consultation on construction and renovation, and to add a new ''mega'' size category to the sanitation inspection fee schedule.

DATES: Fees for construction and renovation inspections are effective June 18, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel M. Harper, Program Manager, Vessel Sanitation Program, National Center for Environmental Health, telephone (770) 488–3524 or e-mail DMH2@CDC.GOV, or Dave Forney, Public Health Advisor, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, telephone (770) 488–7333 or e-mail DLF1@CDC.GOV.

SUPPLEMENTARY INFORMATION:

Purpose and Background

A notice of request for public comment on a proposal to charge fees for consultation services for ship construction and renovation, and to create a new ''Mega'' category for the routine sanitary inspection of ships was published in the **Federal Register** on November 17, 1997, [Volume 62, Pages 61336–61338]. A subsequent amendment to extend the comment period an additional 30 days was published in the **Federal Register** on January 13, 1998, [Volume 63, Number 8, Page 1973].

Discussion of Comments

The public notice of the intent to collect fees for consultation services for ship construction and renovation and to create a new ''Mega'' category for routine inspections provided a 45 day comment period which was extended an additional 28 days at the request of the members of the cruise ship industry. During the comment period, comments were received from two sources, one of which was the International Council of Cruise Lines (ICCL) representing the 17 largest passenger cruise lines that call on major ports in the U.S. and abroad. Discussion of the comments received and CDC's responses follows:

Comment: One commentor stated that the use of Gross Register Tons alone does not correctly indicate a ship's capacity to carry passengers and crew, while the Total Safe Number does, and better reflects the type of ship that is being inspected.

Response: The fees set forth in the public notice were based on Gross Register Tonnage (GRT) of the passenger vessels as reported by Lloyds of London. CDC believes that the use of GRT is a reasonable and equitable method for determining fees since the number and size of the food service areas and the size of the onboard water systems are generally functions of the vessel's GRT. CDC, after considering the commentor's alternative proposal, sees no advantage in the commentor's proposal over CDC's. CDC will continue to periodically review the fee schedule. If actual experience in fee collection indicates that CDC's proposed system does result in substantial inequity, CDC will act promptly to correct the situation.

Comment: One commentor stated that the proposed ''Mega'' category placed an increased financial burden on these large craft by increasing the basic inspection fee by approximately 31% over what these ships were charged in 1997. In addition, the galley size and complexity on these ships is not significantly different than that found on ships in the Extra Large category.

Response: It has been CDC's experience that the size and complexity of the galleys and water systems aboard ships >90,000 GRT are often greater than those found on smaller ships. It is also our belief that performing sanitation inspections of these ships requires additional staff time and resources. However, we have not quantified the increase in resources. Therefore, CDC agrees to postpone any modifications to the existing category structure until there can be a more thorough evaluation of the time, effort and other factors involved with the inspection of these ships.

Comment: One commentor stated that the fee increase in the FY 98 budget should adequately cover the costs of providing construction consultation services without the creation of a new

fee category and that this is supported by the vessel fee calculation utilized in the CDC's **Federal Register** notice which stipulates that current inspection fees fully fund the VSP Program. The commentor states that the proposed consultation fees are duplicative of the fees already being paid by vessel operators to CDC through the sanitation inspection fees.

Response: Generally, the CDC recoups the costs of the VSP through the collection of fees. The fee schedule for sanitation inspections of passenger cruise ships currently inspected under the VSP was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). Since then, CDC has published the fee schedule annually. The formula historically used to determine the fees has been calculated by dividing the cost of the VSP by the weighted number of annual inspections. With the tremendous expansion of the cruise line industry, and concurrent expansion in the number of ships being constructed and renovated, an increasing percentage of VSP staff time and expense is being spent on providing consultation directly to the individual cruise lines building and renovating ships. In the past, consultations for new construction and renovation have included an extensive review of the ships' blueprints, an on-site shipyard inspection as the ship neared completion, and a final construction inspection. This has contributed to an overall increase in the VSP budget and reduces the inspector time available to conduct routine sanitation inspections. Because these construction consultations and inspections are voluntary and are directed to individual ship owners, builders and operators, CDC feels that the cost of these services should be borne by the individual recipients, and not by the collective cruise lines participating in the vessel sanitation program. CDC did not include the cost of construction consultations or inspections in calculating the average cost per inspection for FY 1998. If CDC added the cost of these voluntary services into the existing formula, the sanitation inspection for ALL vessels would have been substantially higher even though none of the existing ships in the program would have received direct benefit from the consultation.

In order to more equitably distribute the cost of the program among the participants, CDC will charge for all inspections conducted by VSP staff. CDC agrees to postpone charging a fee for plan reviews and consultation during construction and renovation until there can be a more thorough evaluation of the time, effort and other factors involved with this activity. Future program budgets will be determined by dividing the cost of the VSP by the weighted number of all inspections.

Comment: One commentor stated that the proposed fee for consultation is all inclusive of plan review, shipyard inspection and final construction inspection and does not allow an interested cruise line to request a consultation or inspection during a specific individual phase of construction or renovation.

Response: CDC agrees that a consultation or inspection should be available for any or all phases of construction and renovation. Therefore, consultation or inspection services for new construction or renovation will be provided in three phases:

In Phase 1, CDC will:

- Conduct a Plan Review with ship officials in either the Miami or Atlanta VSP offices and provide a written report, with recommendations, to the ship officials following the review.
- Provide written consultations to the appropriate ship officials (owners, builders, sub-contractors, etc.) during the construction phase of the ship.
- Provide these plan reviews and consultations at no cost.

In Phase 2, CDC will:

- Require that requests for shipyard inspections be submitted to VSP Atlanta 45 days prior to travel dates (see Appendix A).
- Require that the shipyard pay CDC for all expenses in connection with the shipyard inspection and make all necessary arrangements for lodging and transportation, which includes airfare and ground transportation.
- Charge a standard inspection fee for the shipyard inspection based on the published fee announced annually in the **Federal Register**. Provide the shipyard with an invoice at the completion of the inspection.
- Provide a written report of the shipyard inspection.

In Phase 3, CDC will:

- Conduct the final construction inspection at a U.S. port prior to the ship entering operational service. The time and place of this inspection will be mutually agreed upon by the builder, owner and VSP staff. This inspection will NOT be scored.
- Provide a written report of the final construction inspection.
- Charge a standard inspection fee for the inspection based on the published fee announced annually in the **Federal Register**. Provide the shipyard with an invoice at the completion of the inspection.

This is a voluntary program for the cruise ship builders/owners and a formal written request must be made for a consultation and/or construction inspection. CDC's ability to honor these requests will be based on the availability of VSP staff. A builder/owner may request any one, two, or all of the consultation and inspection phases.

CDC will assign one inspector as the ''project manager'' for each request for consultation or renovation of a ship. The project manager will be the single point of contact at VSP for any discussion regarding the ship from the initial plan review through the final construction inspection. CDC will also provide a second inspector to participate in all plan reviews, consultations, and inspections.

Fees

CDC will not charge a fee for plan reviews and consultation but will charge the published standard fee for all inspections conducted by the program (e.g., shipyard, final construction, sanitation, etc.). The inspection fee is based on the existing fee schedule for sanitation inspections of passenger cruise ships, published annually in the **Federal Register**.

FEE SCHEDULE JANUARY 1, 1998–SEPTEMBER 30, 1998

Vessel size and GRT [1]	Inspection fee
Extra Small (<3,001)	$1,075
Small (3,001–15,000)	2,150
Medium (15,001–30,000)	4,300
Large (30,001–60,000)	6,450
Extra Large (>60,000)	8,600

[1] GRT—Gross Register Tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Applicability

The inspection fees will be applicable to all passenger cruise vessels requesting and receiving services as described in this notice.

Dated: May 13, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Appendix A

Sample

Fax to: Henry Falk, M.D., Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–28, Atlanta, GA 30341–3724, Facsimile (770) 488–4127

Fax copy to: Chief, Vessel Sanitation Program, National Center for Environmental Health Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–16, Atlanta, GA 30341–3724, Facsimile (770) 488–4127

We request the presence of a PHS representative for shipyard consultation on cruise liner (NAME). We tentatively expect to take delivery of the cruise liner on (DATE). We would like to schedule the shipyard consultation for (DATE). We expect the consultation to take approximately (NUMBER OF DAYS).

We will pay CDC in accordance with the inspection fee published in the **Federal Register**, and for all expenses in connection with the shipyard inspection. We will make all necessary arrangements for lodging and transportation, which includes airfare and ground transportation in (CITY, STATE, COUNTRY). We will provide in-kind for lodging and transportation expenses. All remaining expenses, such as en route per diem and meals and miscellaneous expenses, including ground transportation to and from the airport nearest the representatives work site or residence, should be sent to the following address:

Company
Attention:
Street Address
City, State, Country
Zip Code
Office Telephone Number
Facsimile Number

If you have questions regarding this confirmation, please contact:

Signed:

[FR Doc. 98–13212 Filed 5–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0194]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA's regulations governing batch certification of color additives manufactured for use in foods, drugs, cosmetics or medical devices in the United States.

DATES: Submit written comments on the collection of information by July 20, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Color Additive Certification Requests and Recordkeeping—21 CFR Part 80 (OMB Control Number 0910–0216—Extension)

Section 721(a) of the Federal Food, and Drug and Cosmetic Act (the act) (21 U.S.C. 379e(a)) provides that a color additive shall be deemed unsafe unless the additive and its use are in conformity with a regulation that describes the conditions under which the additive may be safely used, or unless the additive and its use conform to the terms of an exemption for investigational use. If a regulation prescribing safe conditions of use has been issued, the additive must be from a batch certified by FDA to conform to the requirements of that regulation and other applicable regulations, unless the additive has been exempted from the certification requirement. Section 721 of the act instructs the Secretary of Health and Human Services (through FDA) to issue regulations providing for batch certification of color additives for which she finds such requirement to be necessary in the interest of protecting the public health. FDA's implementing regulations in part 80 (21 CFR part 80) specify the information that must accompany a request for certification of a batch of color additive and require certain records to be kept pending and after certification. FDA requires batch certification for all color additives listed in 21 CFR part 74 and for all color additives provisionally listed in 21 CFR part 82. Color additives listed in 21 CFR part 73 are exempt from certification.

Under § 80.21, a request for certification must include: Name of color additive, batch number and weight in pounds, name/address of manufacturer, storage conditions, statement of use(s), fee, and signature of requester. The request for certification must also include a sample of the batch of color additive that is the subject of the request. Under § 80.22, the sample must be labeled to show: Name of color additive, batch number and quantity, and name and address of person

requesting certification. A copy of the label or labeling to be used for the batch must accompany the sample. Under § 80.39, the person to whom a certificate is issued must keep complete records showing the disposal of all the color additive covered by the certificate. Such records are to be made available upon request to any accredited representative of FDA until at least 2 years after disposal of all of the color additive.

The request for certification of a batch of color additive is reviewed by FDA's Office of Cosmetics and Colors to verify that all of the required information has been included. Since the information required in the request for certification is unique to the specific batch of color additive involved, it must be generated for each batch. The information submitted with the request helps FDA to ensure that only safe color additives will be used in foods, drugs, cosmetics, and medical devices sold in the United States. The batch number assigned by the manufacturer is a means of temporary identification until a certification lot number has been issued by FDA. After certification, the manufacturer's batch number helps assure that the proper batch of color is indeed being used under the certification lot number issued by FDA. In the case of a batch that has been refused certification for noncompliance with the regulations, the manufacturer's batch number aids in tracing the ultimate disposition of that batch of color additive. The batch weight serves to account for the disposition of the entire batch; for example, it might be used in determining whether uncertified color has been sold under the lot number assigned to the batch by FDA or, in the event of a recall after certification, to determine whether all unused color has been recalled. In addition, the batch weight is the basis for assessing the certification fee. The name and address of the manufacturer of the color additive being submitted for certification allows FDA to contact the person responsible for its manufacture should a question arise concerning compliance with the regulations. Information on storage conditions pending certification is used to evaluate the possibility that the batch could have been inadvertently or intentionally altered in a manner that would make the sample submitted for certification analysis no longer representative of the batch. It is also used when an FDA investigator is sent to the site; the veracity of the storage statements is checked during normal plant inspections. Information on the uses which the person seeking certification proposes that the color be certified for it is to assure that all of the proposed uses are within the limits of the listing regulation. The statement of the fee on the certification request is for accounting purposes so that the person seeking certification can be promptly notified if any discrepancies appear. The information requested on the label of the sample submitted with the certification request is to identify the sample. The regulations require an accompanying copy of the label or labeling to be used for the batch so that FDA can verify that the batch will be labeled appropriately when it enters commerce.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
80.21	20	152	4,091	0.2	818
80.22	20	152	4,091	0.05	205
Total					1,023

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
80.39	27	152	4,091	.25	1,023
Total					1,023

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated total annual burden for this information collection is 2,046 hours. Over the period fiscal year (FY) 1995 to FY 1997, FDA processed an average of 4,091 requests for certification of batches of color additive. Approximately 20 different respondents submitted requests for certification each year over the period FY 1995 to FY 1997. The estimates for the length of time necessary to prepare certification requests and accompanying samples, and to comply with recordkeeping requirements, were obtained from industry program area personnel.

Dated: May 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–13228 Filed 5–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Open Meeting for Representatives of Health Professional Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting with representatives of health professional organizations. The meeting will be chaired by Sharon Smith Holston, Deputy Commissioner for External Affairs. The agenda will include presentations and discussions on the main topic of emerging infectious diseases. FDA staff will make presentations on FDA's involvement in the President's Food Safety Initiative, antimicrobial resistance, and issues in vaccine development and diagnostics. There will also be brief updates on

tobacco and the FDA Modernization Act.

DATES: The meeting will be held on Thursday, May 28, 1998, from 2 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Bethesda Holiday Inn, 8120 Wisconsin Ave., Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Peter H. Rheinstein, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6630. *Registration:* There is no registration fee, however, space is limited. Persons will be registered in the order in which calls are received. Please call Betty Palsgrove at 301–827–6618 to register. Registrations also may be transmitted by FAX to 1–800–344–3332 or 301–443–2446. Please include the name and title of the person attending and the name of the organization.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide an opportunity for representatives of health professional organizations and other interested persons to be briefed by senior FDA staff. It will also provide an opportunity for informal discussion on these topics of particular interest to health professional organizations.

This public meeting is free of charge; however, space is limited. Registration for the meeting will be accepted in the order received and should be sent to the contact person. Registration should include the name and title of the person attending and the name of the organization being represented, if any.

Dated: May 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–13410 Filed 5–15–98; 2:58 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

First Party Audit Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of industry exchange meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing an industry exchange meeting to discuss with the regulated industry a new initiative being considered by the agency. The First Party Audit Program (FPAP) is intended to gather information from selected human use pharmaceutical manufacturers regarding their quality assurance measures. This information would be submitted to FDA by those firms and would substitute, in some measure, for information the agency would otherwise obtain from its direct inspectional activities. The industry exchange meeting is intended to present the broad concepts of this initiative, discuss attendant issues, and obtain feedback from all interested parties as to the merits of proceeding with the project. This meeting is cosponsored by the Center for Drug Evaluation and Research's (CDER's) Office of Compliance and the Office of the Commissioner's Industry Small Business and Community Affairs Staff.

DATES: The industry exchange meeting will be held on June 23, 1998, from 9 a.m. to 4 p.m. Registration is required by June 12, 1998.

ADDRESSES: The industry exchange meeting will be held at the Hyatt Regency Bethesda Hotel, One Bethesda Metro Center, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: C. Russ Rutledge, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2455.

Those persons interested in attending this meeting should FAX or e-mail their registration to C. Russ Rutledge (FAX 301–594–2202 or e-mail via the Internet at ''rutledgec@cder.fda.gov''), including name of attendee(s), title, affiliation, mailing address, phone number, fax number, and e-mail address. There is no registration fee for this meeting, but advance registration is required. Interested parties are encouraged to register early because space is limited.

SUPPLEMENTARY INFORMATION: FDA relies in large part on information acquired during inspections of manufacturing facilities, conducted by the agency's investigators, to ensure that firms are meeting the minimum levels of product quality assurance for human drug products. Although the agency believes that full inspection by its investigators is the ideal situation, FDA is evaluating alternative methods of acquiring information it would otherwise directly obtain from traditional onsite inspections. One approach the agency is considering is the FPAP. The first party is the manufacturing firm itself. The concept is to limit program participation to those manufacturers FDA recognizes as having both a quality assurance program that is effective and a record of substantial compliance with FDA requirements. Program participation would be strictly voluntary. Firms the agency selects for the program would supply FDA with information from its self-audits apart from FDA onsite inspections. The agency would use this information along with modified inspections to document minimum levels of assurance of manufacturing quality of the pharmaceuticals produced in that site.

FDA is holding this industry exchange meeting to present the core concepts of FPAP, discuss the relevant issues, and afford interested parties the opportunity to pose questions and provide comments. The agency will consider this public input in deciding on whether and how to proceed with the program, initially on a pilot basis.

The agenda and any other relevant information will be available electronically via the Internet at ''http://www.fda.gov/cder/dmpq/fpap.htm'' beginning Monday, May 18, 1998.

Dated: May 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–13163 Filed 5–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on June 23, 1998, 8 a.m. to 5 p.m., and on June 24, 1998, 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly L. Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, (For Federal Express Deliveries—Chapman Bldg., 801 Thompson Ave., rm. 200, Rockville, MD 20857) or FDA Advisory Committee Information Line,

1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 23 and 24, 1998, the committee will focus on both safety/efficacy and quality topics with a bridging topic (exposure). Specific topics to be discussed include: (1) Nonclinical/nonhuman pharmacology/toxicology research programs to support the drug development and registration process, (2) in vitro drug metabolism to support guidance updating, (3) the revision of the guidance for scale-up and post-approval changes for immediate release drug products, and (4) complex drug substances.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 16, 1998. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11 a.m. on June 23, 1998, and between approximately 10:15 a.m. and 10:45 a.m. on June 24, 1998. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before June 16, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 11, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–13314 Filed 5–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0451]

Draft Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 13, 1998 (63 FR 18029). The document announced the availability of a proposed guide entitled ''Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables.'' The document was published with some errors. This document corrects those errors.

DATES: Written comments on the proposed guide by June 29, 1998.

FOR FURTHER INFORMATION CONTACT:

Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916, FAX 202–260–9653, e-mail: jsaltsma@bangate.fda.gov, or

Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–2975, FAX 202–205–4422, e-mail: msmith1@bangate.fda.gov.

In FR Doc. 98–9636, appearing on page 18029 in the **Federal Register** of Monday, April 13, 1998, the following corrections are made:

1. On page 18029, in the third column, in the first complete paragraph, beginning in the second line from the bottom ''WWW (http://www.fda.gov/dockets/dockets.htm)'' is corrected to read ''WWW (http://www.fda.gov/ohrms/dockets/default.htm)''.

2. On page 18030, in the first column, in the last paragraph, beginning in the third line from the bottom ''WWW (http://www.fda.gov/dockets/dockets.htm)'' is corrected to read ''WWW (http://www.fda.gov/ohrms/dockets/default.htm)''.

Dated: May 8, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–13315 Filed 5–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1998.

Name: Advisory Committee on Infant Mortality.

Date and Time: June 29, 1998; 9:00 a.m.—5:00 p.m.; June 30, 1998; 8:30 a.m.—4:00 p.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814, (301) 897–9400

The meeting is open to the public.

Agenda: Topics that will be discussed include: Low-Birth Weight; Discrepancies in Infant Mortality; the Healthy Start Program and Evaluation; and Early Postpartum Discharge.

Anyone requiring information regarding the Committee should contact Dr. Peter C. van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, Room 18–31, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting or having questions regarding the meeting should contact Ms. Kerry P. Nesseler, Health Resources and Services Administration, Maternal and Child Health Bureau, Telephone (301) 443–2204.

Agenda items are subject to change as priorities dictate.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. 98–13301 Filed 5–18–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Public Advisory Group; Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group.

DATES: June 1–2, 1998, at 10:30 a.m.

ADDRESSES: Fourth floor conference room, 645 ''G'' Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action

No. A91–081 CV. The agenda will include a review of project proposals submitted for the fiscal year 1999 Work Plan and a discussion of the restoration reserve fund.

Dated: May 13, 1998.

Terence Martin,

Acting Director, Office of Environmental Policy and Compliance.

[FR Doc. 98–13274 Filed 5–18–98; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sport Fishing and Boating Partnership Council; Notice of Meeting

SUMMARY: As provided in Section 10(a)(2) of the Federal Advisory Committee Act, the Service announces a meeting designed to foster partnerships to enhance recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: June 1, 1998, from 1:30 p.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Old Town Holiday Inn Select, 480 King Street, Alexandria, VA 22314, Telephone (703) 549–6080, FAX (703) 684–6508.

Summary minutes of the conference will be maintained by the Coordinator for the Council at 1033 North Fairfax Street, Suite 200, Arlington, VA 22314, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Doug Alcorn, Council Coordinator, at 703/836–1392.

SUPPLEMENTARY INFORMATION: The Sport Fishing and Boating Partnership Council (Council) will convene to discuss: (1) The ongoing effort to monitor and evaluate Federal agency activities pursuant to Executive Order 12962 for Recreational Fisheries; (2) the status of the National Outreach Strategic Plan; and (3) the status of Governors' Coalition for Recreational Fisheries, sponsored by Arkansas Governor Mike Huckabee. Under Executive Order 12962, the Council is required to monitor and annually report its findings on 15 Federal agencies' actions and policies for protecting, restoring, and enhancing recreational fishery resources. The Council expects to hear a report from the National Recreational Fisheries Coordination Council on the Federal accomplishments for Fiscal Year 1997. The Council will determine the best approach for fulfilling its role under Executive Order 12962. The Council is also charged by the U.S. Fish and Wildlife Service to develop a National Outreach Strategic Plan by August 1, 1998. This meeting will be to discuss the status of that assignment and instruct the Council's Outreach Committee to proceed accordingly. Arkansas Governor Mike Huckabee is implementing an element of the Council's Recreational Fisheries Initiative, produced last year in concert with more than 100 recreational fisheries stakeholders. The Governor has agreed to convene Governors annually to develop strategies for promoting recreational fishing and boating in their respective states. The discussion of this initiative will conclude by identifying actions needed to support this initiative. Public comment will be sought at the conclusion of discussion of the third agendum.

Dated: April 29, 1998.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 98–13184 Filed 5–18–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment IV to the Tribal-State Compact for Regulation of Class III Gaming Between the Coquille Indian Tribe and the State of Oregon, which was executed on March 23, 1998.

DATES: This action is effective May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: May 8, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–13219 Filed 5–18–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment IV to the Tribal-State Compact for Regulation of Class III Gaming Between the Confederated Tribes of Siletz Indians of Oregon and the State of Oregon, which was executed on March 22, 1998.

DATES: This action is effective May 19, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Acting Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: May 9, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–13218 Filed 5–18–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling

on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment IV to the Confederated Tribes of the Warm Springs Reservation of Oregon and the State of Oregon Gaming Compact, which was executed on March 23, 1998.

DATES: This action is effective May 19, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: May 12, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–13220 Filed 5–18–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–067–08–1990–00) (0003)]

Noncompetitive Sale of Public Lands in Eddy County, New Mexico 100623

SUMMARY: The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat 2750, 43 USC 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 24 S., R. 27 E., NMPM,
Sec. 08: S½SW¼SE¼NE¼SW¼.

Containing approximately 1.25 acres.

The land is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from date of this notice, whichever occurs first.

The land is being offered by direct sale to the Harley Davis Irrevocable Trust, to correct an encroachment of a house located on the public lands and to resolve a historic unauthorized use.

The patent, when issued, will contain certain reservations to the United States and will be subject to existing rights-of-way. Detailed information concerning these reservations, as well as specific conditions of the sale, are available for review at the Carlsbad Field Office, Bureau of Land Management, 620 East Greene, Carlsbad, New Mexico 88220.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at 2909 West Second Street, Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 5, 1998.

Edwin L. Roberson,

Acting District Manager.

[FR Doc. 98–13185 Filed 5–18–98; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–067–08–1990–00) (0002)]

Noncompetitive Sale of Public Lands in Eddy County, New Mexico 100616

SUMMARY: The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat 2750, 43 USC 1713), at not less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 22 S., R. 27 E., NMPM
Sec. 10: NE¼.

Containing approximately 160 acres.

The land is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from date of this notice, whichever occurs first.

The land is being offered by direct sale to the City of Carlsbad to develop a sod farm and tree nursery.

The patent, when issued, will contain certain reservations to the United States and will be subject to existing rights-of-way. Detailed information concerning these reservations, as well as specific conditions of the sale, are available for review at the Carlsbad Field Office, Bureau of Land Management, 620 East Greene, Carlsbad, New Mexico 88220.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at 2909 West Second Street, Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 5, 1998.

Edwin L. Roberson,

Acting District Manager.

[FR Doc. 98–13186 Filed 5–18–98; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in *United States* v. *W.R. Grace & Co.-Conn.*, Civil Action No. 98–2045 (AMW) was lodged on April 30, 1998, in the United States District Court for the District of New Jersey. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. § 9601 *et seq.*, on behalf of the U.S. Army Corps of Engineers (''ACOE''), U.S. Department of Energy (''DOE''), U.S. Environmental Protection Agency (''EPA'') and U.S. Department of the Interior against W.R. Grace & Co.-Conn. (''W.R. Grace''). The Complaint alleges that W.R. Grace is liable under Section 107(a) of CERCLA, 42 U.S.C. 9607.

Pursuant to the Consent Decree, W.R. Grace will pay to the United States $30 million in settlement of both DOE's and ACOE's cleanup costs, $1.5 million in settlement of EPA's costs, and $270,000 to DOE to settle natural resource damage claims. In addition, if the Consent Decree is entered, the United States will also be paid interest that has been accruing on monies that W.R. Grace has maintained in an escrow account since August 1997. That interest is currently approximately $400,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *W.R. Grace & Co.-Conn.*, DOJ Ref. #90–11–2–1200.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, Federal Building, 7th Floor, 970 Broad Street, Newark, New Jersey 07102; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check made payable to the Consent Decree Library in the amount of

$33.75 (25 cents per page reproduction costs). If a copy of the Consent Decree without the attachments is sufficient, please specify that fact and enclose a check in the amount of $8.50.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–13177 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 25, 1998, Arenol Corporation, 189 Meister Avenue, Somerville, New Jersey 0887, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II

The firm plans to manufacture the listed controlled substances to produce pharmaceutical products for its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 20, 1998.

Dated: May 6, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13324 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 25, 1998, Arenol Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

The firm plans to import the listed controlled substances to manufacture pharmaceutical products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 18, 1998.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 7, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13326 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that in a letter dated February 5, 1998, High Standard Products, 1100 W. Florence Avenue, #B, Inglewood, California 90301, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of normorphine (9313), a basic class of controlled substance in Schedule I.

The firm plans to manufacture an analytical reference standard.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 20, 1998.

Dated: May 6, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13323 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration

By Notice dated January 8, 1998, and published in the Federal Register on February 4, 1998, (62 FR 5818), Isotec,

Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methacathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480).	I
Aminorex (1585)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315).	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2, 5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3, 4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymeth- amphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (110e)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbo-nitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk non-dosage forms) (9273).	II
Morphine (9300)	II
Levo-Alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to use small quantities of the listed controlled substances to produce standards for analytical laboratories.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Isotec, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 6, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13322 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 4, 1998, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 20, 1998.

Dated: May 7, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13328 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 4, 1998, Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm is importing the phenylacetone to manufacture dextroamphetamine sulfate.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 18, 1998.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46

(September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 5, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13331 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Registration

By Notice dated February 13, 1998, and published in the **Federal Register** on March 5, 1998 (62 FR 10944), Mallinckrodt Chemical Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

The firm plans to import the listed controlled substances to manufacture bulk finished products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt Chemical Inc. to import listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: May 6, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13319 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 15, 1998, Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, New Jersey 07936, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance methylphenidate (1724).

The firm plans to manufacture the finished product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 20, 1998.

Dated: May 5, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13330 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 8, 1998, and published in the Federal Register on February 4, 1998, (63 FR 5818), Pharmacia & Upjohn Company, 7000 Portage Road, 2000–41–109, Kalamazoo, Michigan 49001, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the listed controlled substance for distribution as bulk product to a customer.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Pharmacia & Upjohn Company to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 6, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13321 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 31, 1998, Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marijuana (7360)	I
Cocaine (9041)	II

The institute will manufacture marijuana cigarettes for the National Institute on Drug Abuse (NIDA) and the cocaine will be used for reference standards, human and animal research, as dictated by NIDA.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to

the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 20, 1998.

Dated: May 6, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13325 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances, Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 27, 1998, Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, New Jersey 07724–2274, made application by renewal to the Drug Enforcement Administration to be registered as an importer of propiram (9649), a basic class of controlled substance listed in Schedule I.

The firm plans to import the propiram to manufacture in bulk for product development.

Any manufacturer holding, or applying for, registration as a bulk manufactuter of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 6, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13320 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 23, 1998, Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771, made application by renewal to the Drug Enforcement Administration to be registered as an importer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The tetrahydrocannabinols will be utilized exclusively for non-human consumption in drug of abuse detection kits.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 18, 1998.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 7, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13333 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 17, 1998, Roche Diagnostic Systems Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of the listed controlled substances for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 20, 1998.

Dated: May 7, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13334 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 17, 1998, Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocyn (7438)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47. Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (June 18, 1998).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistance Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 4, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 98–13332 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 20, 1998, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040) a basic class of controlled substance in Schedule II.

The firm plans to import coca leaves to manufacture bulk controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register

Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: May 5, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13327 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 20, 1998, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture bulk controlled substances for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 20, 1998.

Dated: May 5, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–13329 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (reinstatement, without change, of a previously approved collection for which approval has expired).

Nomination for Young American Medal for Bravery

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 20, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information.

(1) *Type of information:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Nomination for Young American Medal for Bravery.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/1, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government, State, Local or Tribal. Other: Individuals or households; Not-for-profit institutions. 42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ellen Wesley, 202–616–3558, Office of Budget and Management Services, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, DC 20531.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: May 12, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–13231 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (reinstatement, without change, of a previously approved collection for which approval has expired).

Nomination for Young American Medal for Service

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 20, 1998.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Ellen Wesley, 202–616–3558, Office of Budget and Management Services, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, DC 20531. Additionally, comments may be submitted via facsimile to 202–616–3472.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Nomination for Young American Medal for Service.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1673/2, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal Government State, Local or Tribal.

Other: Individuals or households; Not-for-profit institutions.

42 U.S.C. 1921 et seq. authorizes the Department of Justice to collect information from state governors, chief executives of the U.S. territories, and the mayor of the District of Columbia to implement the Young American Medals Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 20 respondents will complete a 3-hour nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 60 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, DC 20530.

Dated: May 13, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–13232 Filed 5–18–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 15, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Government Performance Results Act (GPRA)—compliant program performance and participant outcomes data system.

OMB Number: 1205–ONEW (New).

Frequency: Quarterly.

Form No.	Affected public	Respondents	Average time per response (in hours)
Data Gathering	State, Local or Tribal Govt. or Federal Government	7,500	.5
Report Generation	States	50	5

Total Burden Hours: 16,000.

Total annualized capital/startup costs: 500,000.

Total annual costs (operating/maintaining systems or purchasing services): 225,000.

Description: A GPRA-compliant data collection and reporting system that supplies critical information on the operation of the Trade Adjustment Assistance program and the outcomes for its participants.

Agency: Mine Safety and Health Administration.

Title: Program to Prevent Smoking in Hazardous Areas.

OMB Number: 1219–0041 (Extension).

Frequency: Annually.

Affected Public: Business or other for-profit institutions.

Number of Respondents: 328.

Total Responses: 328.

Estimated Time per Respondent: .5 hour.

Total Burden Hours: 164.

Total annualized capital/startup costs: 0.

Total annual costs: 0.

Description: Coal mine operators are required to develop programs to ensure that any person entering the mine does not carry smoking materials, matches or lighters. The programs are necessary to ensure that a fire or explosion does not occur.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–13259 Filed 5–18–98; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Office of Policy and Research; Proposed Information Collection Request Submitted for Public Comment

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Policy and Research is soliciting comments concerning the proposed extension of the collection of the Occupational Code Request (OCR) information.

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 20, 1998. The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Donna Dye, Office of Policy and Research, Employment and Training Administration, Room N–5636, 200 Constitution Avenue, N.W., Washington, D.C., 20210, (202) 219–7161 (this is not a toll free number), FAX (202) 219–9186.

SUPPLEMENTARY INFORMATION:

I. Background

The *Dictionary of Occupational Titles* (DOT) classifies nearly all jobs in the United States economy. However, new jobs are constantly evolving, and old ones are eliminated as technology and other factors change. As the O*NET (Occupational Information Network) system, the automated replacement of the DOT, is in a developmental/transitional phase, the need for Occupational Code Requests (OCRs) remains.

The ETA 741 Form, the Occupational Code Request (OCR), was developed by the Occupational Analysis (OA) program, as a public service to the users of the revised DOT in an effort to help them in obtaining occupational codes, titles and definitions for jobs that they were unable to locate in the DOT. In addition, data provided on the OCR may also be useful indicators of potential occupations that should be studied as part of the new O*NET system.

Use of the OCR is voluntary and is provided only (1) as a uniform guideline to the public and private sectors to submit information, (2) and to assist O*NET in identifying potential changes in occupations or emerging occupations.

II. Current Actions

The Office of Policy and Research, during the development/transitional phase of O*NET (the Occupational Information Network) seeks to provide the both the public and private sectors with needed occupational codes that cannot be located in the DOT. Therefore, the need for continuing an existing collection of this information is requested.

Type of Review: Extension (without change).

Agency: Employment and Training Administration.

Title: Occupational Code Request.

OMB Number: 1205–0137.

Affected Public: Federal Government, State or Local Government; Individuals; and Business or other for-profit/Not-for-profit institutions.

Total Respondents: 57.

Frequency: On occasion.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 29 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $710.10.

Comments submitted in response to this comment request will be

summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 13, 1998.

Gerri Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 98–13258 Filed 5–18–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Representative of Miners

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) in minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Representative of Miners. MSHA is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before July 20, 1998.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy. Ms. Silvey can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, *et seq.*, (Mine Act) requires the Secretary of Labor to exercise many of his duties under the Act in cooperation with miners' representatives. The Act also establishes miners' rights which may be exercised through a representative. Title 30, CFR Part 40 contains procedures which a person or organization must follow in order to be designed as a representative of miners.

II. Current Actions

The information is used to identify the designated representative of miners of a specific mine. The Mine Act gives the miner or the representative of miners the right to accompany an MSHA inspector without any loss of pay.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: 30 CFR 40.3, 40.4, and 40.5, Representative of Miners.

OMB Number: 1219–0042.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc.: 30 CFR 40.3, 40.4, 40.5.

Total Respondents: 350.

Frequency: On occasion.

Total Responses: 350.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: 175 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 1998.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 98–13261 Filed 5–18–98; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–24]

Agency Information Collection Activities; Proposed Collection; Comment Request; Fire Brigades (Organizational Statement) (29 CFR 1910.156)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of the information collection requirements contained in the standard on Fire Brigades (29 CFR 1910.156). The Agency is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before July 20, 1998.

ADDRESSEE: Comments are to be submitted to the Docket Office, Docket No. ICR–98–24, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–8061. A copy of the referenced information collection request is available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, extension 100, or Barbara Bielaski at (202) 219–8076, extension 142. For electronic copies of the Information Collection Request on Fire Brigades (29 CFR 1910.156), contact OSHA's WebPage on the Internet at http://www.osha.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

Fighting fires as a member of a fire brigade presents a significant risk of harm to an employee. In fact, fire fighting continues to be one of the Nation's most hazardous occupations. To mitigate the risks of employees fighting fires, OSHA developed a standard for fire brigades in 1980. The Fire Brigade standard does not require the employer to organize a fire brigade. However, if the employer does decide to organize a fire brigade, the provisions of the standard must be met.

There are various types of fire brigades. Some fire brigades merely monitor and assist in evacuation, others perform incipient fire fighting, while others perform Interior structural fire fighting. The tasks, responsibility, training, and personal protective equipment needs differ according to the type of fire brigade organized at the workplace. Therefore, 29 CFR 1910.156, requires employers who have fire brigades to develop and maintain an organizational statement which defines the type of fire brigade being organized and describes the functions that the employer expects the fire brigade to perform.

II. Current Actions

This notice requests Office of Management and Budget (OMB) approval of the information collection requirements contained in the Fire Brigade standard.

Type of Review: Extension of a Currently Approved Collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Fire Brigades (Organizational Statement) (29 CFR 1910.156).

OMB Number: 1218–0075.

Agency Number: Docket Number ICR–98–24.

Affected Public: State or local governments; Business or other for-profit.

Number of Respondents: 1,670.

Frequency: Initially, On Occasion.

Average Time per Response: 5 minutes (0.8 hr.).

Estimated Total Burden Hours: 172.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 12th day of May 1998.

Charles N. Jeffress,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 98–13255 Filed 5–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–22]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; OSHA Data Collection System (1218–0209)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the OSHA Data Collection System. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 20, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 98–22, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–6463. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 219–6463 or Barbara Bielaski at (202) 219–8076. For electronic copies of the OSHA Data Collection Initiative Request, contact OSHA's WebPage on the Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

To meet many of OSHA's program needs, OSHA is proposing to continue its data initiative to collect occupational injury and illness data and information on number of workers employed and number of hours worked from establishments in portions of the private sector. OSHA will collect 1998 data from 80,000 employers required to create and maintain records pursuant to CFR part 1904. These data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems. Successful implementation of the data collection initiative is critical to OSHA's reinvention efforts and the data requirements tied to the Government Performance and Results Act (GPRA).

II. Current Actions

This notice requests OMB approval of the paperwork requirements for the OSHA Data Collection System. Approval is necessary to ensure that the Agency continues to obtain establishment data necessary to carry on with the development and expansion of the new OSHA. This will allow the Agency to deal with a larger number of employers without massive increases in resources, will reduce intrusive interventions in workplaces that are relatively safe, and will lead to improved workplace safety and health for America's workers. In addition, OSHA will to be able to proceed with its GPRA requirements to monitor the results of Agency activities, quantify and evaluate the successes and failure of its various programs based on program results, identify the most efficient and effective program mix, and promote the development of programs and policies based on outcome data.

Type of Review: Extension of currently approved collection.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Collection System.

OMB Number: 1218–0209.

Agency Number: ICR–98–22.

Affected Public: Business or other for-profit and State, Local or Tribal Government.

Cite/Reference/Form/etc.: OSHA Form 196A and OSHA Form 196B.

Total Respondents: 80,000.

Frequency: Annually.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 35,000 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 1998.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 98–13256 Filed 5–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–23]

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 29 CFR Part 1904 Recording and Reporting Occupational Injuries and Illnesses (1218–0176)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the paperwork requirements of 29 CFR part 1904. Recording and Reporting Occupational Injuries and Illnesses (less 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents and 1904.17, Annual OSHA Injury and Illness Survey of Ten or More Employers).

DATES: Written comments must be submitted on or before July 20, 1998. Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No., ICR–98–23 U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Dave Schmidt, Office of Statistics, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 219–6463. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Dave Schmidt at (202) 219–6463 or Barbara Bielaski at (202) 219-8076. For electronic copies, contact

OSHA's WebPage on the Internet at http://www.osha.gov/.

SUPPLEMENTARY INFORMATION:

I. Background

The OSHA Act and 29 CFR Part 1904 prescribe that certain employers maintain records of job related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to provide workers a safe and healthy work environment. The data are also needed by the Bureau of Labor Statistics to report on the number and rate of occupational injuries and illnesses in the country.

The data also provide information for employers and employees of the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, employees who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. This would generally raise the overall level of safety and health in the workplace.

OSHA currently has approval from the Office of Management and Budget (OMB) for information collection requirements contained in 29 CFR part 1904. That approval will expire on December 31, 1998, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from those interested parties and to seek public response to several questions related to the development of OSHA's estimation. Interested parties are requested to review OSHA's estimates, which are based upon the most current data available, and to comment on their accuracy or appropriateness in today's workplace situation.

29 CFR 1904.8, Reporting of Fatality or Multiple Hospitalization Incidents (OMB control number 1218–0007) and 29 CFR 1904.17, Annual OSHA Injury and Illness Survey of Ten or More employers (OMB control number yet to be assigned) are each under separate Information Collection Request (ICR) packages.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses.

Type of Review: Extension of currently approved collection.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Recording and Reporting Occupational Injuries and Illnesses.

OMB Number: 1218–0176

Agency Number: ICR–98–23

Frequency: Recordkeeping.

Affected Public: Business or other for-profit; Farms; Not-for-profit institutions; State and Local Government.

Cite/Reference/Form/etc: 29 CFR Part 1904; OSHA No. 200; OSHA No. 101

Number of Respondents: 1,110,398

Estimated Time Per Respondent: 1.56 hours

Total Burden Hours: 1,741,959 hours

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Dated: May 12, 1998.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 98–13257 Filed 5–18–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–90]

SGS U.S. Testing Company Inc., Applications for Renewal and Expansion of Recognition

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of request for renewal and expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL), and preliminary finding.

SUMMARY: This notice announces: (1) the application of SGS U.S. Testing Company Inc. (formerly U.S. Testing Company, Inc., California Division) for renewal of its recognition as an NRTL under 29 CFR 1910.7, and (2) the applications of SGS U.S. Testing Company Inc. for expansion of its recognition as an NRTL under 29 CFR 1910.7, for a new site and to use additional programs and procedures, and presents the Agency's preliminary finding. In addition, this notice formally reflects the name change to SGS U.S. Testing Company Inc.

DATES: The last date for interested parties to submit comments is July 20, 1998.

ADDRESS: Send comments concerning this notice to: NRTL Program, Office of Technical Programs and Coordination Activities, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, NRTL Recognition Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that SGS U.S. Testing Company Inc. (SGS) has applied to the Occupational Safety and Health Administration (OSHA), pursuant to 29 CFR 1910.7, for renewal and for an expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). When first recognized as an NRTL, the organization's name was U.S. Testing Company, Inc., California Division. SGS informed OSHA of the change in name (see Exhibit 7B), and this notice reflects that change. In regards to the renewal, SGS received its recognition as an NRTL on March 23, 1993 (see 58 FR 15509), for a period of five years ending March 23, 1998. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. SGS applied for a renewal of its recognition on March 23, 1997 (see Exhibit 7C), within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process. In regards to the expansions, SGS requests recognition to use additional programs and procedures. However, that use will be subject to certain conditions. SGS also requests recognition for another testing facility (site) in Fairfield, New Jersey, which will become the headquarters of its NRTL operations. The application for this facility is for recognition for testing and certification to the test standards listed below in the section titled ''Expansion of Recognition—Additional Facility.'' The application incorporates the use of the additional programs and procedures, also listed below. The previous application of SGS, pursuant to 29 CFR 1910.7, covered its recognition as an NRTL (56 FR 10045, 3/23/92), which OSHA granted on the date noted above.

The address of the SGS testing facilities covered by this application are:

SGS U.S. Testing Company Inc., 291 Fairfield Avenue, Fairfield, New Jersey 07004.

SGS U.S. Testing Company Inc., 555 Telegraph Road, Los Angeles, California 90040.

Background

This **Federal Register** notice announces the application of SGS U.S. Testing Company Inc. (formerly U.S. Testing Company, Inc., California Division), dated March 23, 1997 (See Exhibit 7C), for renewal of its recognition as an NRTL. This notice also covers the application of SGS, dated April 21, 1997 (see Exhibit 7D), for recognition of its Fairfield, New Jersey testing facility as an NRTL. In letters dated July 27, 1997 and February 4, 1998 (see Exhibits 7E and 7F), SGS also requested recognition to use the additional programs and procedures listed below.

SGS according to the applicant is incorporated in the State of New York, and is 100% owned by SGS North America Inc., which in turn is owned by SGS Societe General de Surveillance S.A., based in Geneva, Switzerland. This same ownership relationship existed at the time SGS was first recognized as an NRTL in March 1993.

Renewal of NRTL Recognition

SGS requests renewal of the recognition of its Los Angeles testing facility for the following standards for which it was previously recognized:

ANSI/UL 1 Flexible Metal Conduit
ANSI/UL 3 Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 250 Household Refrigerators and Freezers
ANSI/UL 514A Metallic Outlet Boxes, Electrical
UL 544 Electric Medical and Dental Equipment
ANSI/UL 632 Electrically Actuated Transmitters
ANSI/UL 751 Vending Machines
ANSI/UL 913 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 1012 Power Supplies
UL 1236 Electric Battery Chargers
UL 1270 Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1459 Telephone Equipment
ANSI/UL 1484 Residential Gas Detectors
ANSI/UL 1571 Incandescent Lighting Fixtures
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations

Expansion of Recognition—Additional Facility

SGS requests recognition of its Fairfield, New Jersey testing facility for the following standards when applicable to equipment or materials that will be used in environments under OSHA's jurisdiction. SGS desires recognition for testing and certification of products tested for compliance with these test standards, and OSHA has determined they are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General

The recognition of this additional testing facility also incorporates the use of the additional programs and procedures listed below.

Expansion of Recognition—Programs and Procedures

SGS requests expansion of its recognition to use the following additional programs and procedures, based upon the requirements as detailed in the **Federal Register** document titled ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures,'' (60 FR 12980, 3/9/95). This notice describes nine programs or procedures which an NRTL may use in certifying a product, all of which require that the NRTL retain primary control of or responsibility for all aspects of product certification. Each NRTL is automatically approved to use the program called the ''Basic Procedure,'' when it is first recognized.

1. Acceptance of testing data from independent organizations, other than NRTLs.

2. Acceptance of witnessed testing data.

Conditions—Use of Programs and Procedures

The following conditions apply to the recognition to use the additional programs and procedures, and are in addition to the requirements detailed in the previously cited March 9, 1995 **Federal Register** (60 FR 12980):

a. SGS U.S. Testing Company Inc., Fairfield, New Jersey, will review and approve the qualifications of all external organizations prior to SGS U.S. Testing Company Inc. accepting test data from these organizations.

b. SGS U.S. Testing Company Inc., Fairfield, New Jersey, will review and approve the qualifications of all external organizations prior to SGS U.S. Testing Company Inc. using a site of any of these organizations for witnessed test data.

Preliminary Finding

SGS addressed the criteria that have to be met for renewal and for expansion of its recognition as an NRTL. In connection with the renewal and the use of the programs, OSHA carried out an on-site review (evaluation) of the Los Angeles, California, on August 4–5, 1997. OSHA also carried out an on-site review (evaluation) of the Fairfield, New Jersey facility, on June 2–3, 1997. Discrepancies noted by the review team during the on-site review were responded to following its completion and are included as an integral part of the on-site review report (see Exhibits 8). With the preparation of the final review report, the NRTL Program staff was satisfied that SGS had addressed concerns arising from the review. In the cover memo for the report, the staff recommended that the recognition of SGS be renewed, and be expanded to allow the use of the additional programs and procedures, subject to the above conditions. The staff also recommended the recognition of the SGS Fairfield, New Jersey testing facility, which will become the headquarters of its NRTL operations.

Following a review of the application file and the on-site review report, the NRTL Program staff concluded that the applicant appeared to have met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory for the Los Angeles, California facility, and for the expansion of recognition to include the Fairfield, New Jersey facility, and for use of the additional programs and procedures, subject to the above conditions. The staff therefore recommended to the Assistant Secretary that the applications be preliminarily approved.

Based upon a review of the complete application, and the recommendations of the staff, including the recommendation in the on-site review report, dated February 27, 1998, the Assistant Secretary has made a preliminary finding that SGS U.S. Testing Company Inc. can meet the requirements as prescribed by 29 CFR 1910.7 for renewal of its recognition, and for the expansion of its recognition to include the additional facility, and to use the additional programs and

procedures, subject to the above conditions.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than the last date for comments (see **DATES** above), and submitted to the address provided above (see **ADDRESS**). Copies of the SGS application, letters and supporting documentation, the on-site review report, and all submitted comments, as received, are available for inspection and duplication (under Docket No. NRTL–2–90) at the Docket Office, Room N2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (SGS U.S. Testing Company Inc.) satisfies the requirements for renewal and for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider to be appropriate in accordance with appendix A to § 1910.7.

Signed at Washington, DC., this 12th day of May, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–13260 Filed 5–18–98; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

National Summit on Retirement Savings; Notice of Meeting

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of meeting agenda.

SUMMARY: This document provides notice of the agenda for the National Summit on Retirement Savings, as called for by the Savings Are Vital To Everyone's Retirement (SAVER) Act, which amends Title I of the Employee Retirement Income Security Act of 1974.

DATES: The National Summit on Retirement Savings will be held on Thursday, June 4, 1998, and Friday, June 5, 1998, beginning at 8:45 am E.S.T. on June 4, and ending at 1 pm E.S.T. on June 5.

ADDRESS: The Summit will be held at the Hyatt Regency on Capitol Hill, 400 New Jersey Ave., NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Jay Rosenblum, Office of the Assistant Secretary, Pension and Welfare Benefits Administration, US Department of Labor, Room S–2524, 200 Constitution Ave., NW, Washington, DC 20210, (202) 219–8233, or Don Blandin, President, American Savings Education Council, Suite 600, 2121 K Street, NW, Washington, DC 20037–1896, (202) 659–0670. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On November 20, 1997, the President signed Public Law 105–92 (1997), the ''Savings Are Vital to Everyone's Retirement Act of 1997'' (SAVER). The SAVER legislation is aimed at advancing the public's knowledge and understanding of the importance of retirement savings by: (1) Providing a bipartisan National Summit on Retirement Savings co-hosted by the President and the Congressional Leadership in the House and Senate; and (2) establishing an ongoing educational program coordinated by the Department of Labor. The Summit will be held June 4 and 5, 1998 in Washington.

The purpose of the Summit is to: (1) Increase public awareness of the value of personal savings for retirement, (2) advance the public's knowledge and understanding of retirement savings and its importance to the well being of all Americans, (3) facilitate the development of a broad-based, public retirement savings education program, (4) identify the barriers faced by workers who want to save for retirement, (5) identify the barriers which employers, especially small employers, face in assisting their workers in accumulating retirement savings, (6) examine the impact and effectiveness of individual employers who promote personal savings and retirement savings plan participation among their workers, (7) examine the impact and effectiveness of government programs at the Federal, State, and local levels to educate the public about retirement savings principles, (8) develop recommendations for governmental and private sector action to promote pensions and individual retirement savings, and (9) develop recommendations for the coordination of Federal, State, and local retirement savings education initiative.

The Agenda for the National Summit on Retirement Savings follows. This agenda is subject to change.

Thurs, June 4, 1998

7:00am–8:00am Registration at Hotel
8:00am–9:00am Breakfast
9:00am–9:30am Opening Session: Welcome and Remarks By Presiding Officers
9:30am–10:45am Session One: Panel Discussion on Current State—Savings & Education Today

Panelists:

1. Dallas Salisbury, Employee Benefit Research Institute (moderator)
2. Mathew Greenwald, Mathew Greenwald and Associates
3. Josephine Tsao, IBM
4. James Ray, Connerton Ray
5. Craig Hoffman, Corbel & Company
6. Ann Combs, William M. Mercer Companies Inc.

10:45am–11:00am Break
11:00am–12:00pm Keynote Session: Remarks by the President, the Speaker of the House, and other Congressional Leadership
12:00pm–1:00pm Concurrent Breakout Session: Employee and Employer Barriers
1:00pm–2:30pm Lunch with Speakers
2:30pm–3:45pm Concurrent Breakout Session: Employee and Employer Opportunities
3:45pm–4:30pm Free Time
4:30pm–7:15pm White House Reception
7:30pm–9:30pm Dinner and Speeches by Congressional Leadership

Day Two, Fri. 6/5

8:00am–9:00am Working Breakfast with Breakout Groups
9:15am–10:45am Session Two: Panel Discussion on Public and Private-Sector Outreach Activities/Best Practices

Panelists:

1. David Walker, Arthur Andersen LLP (Moderator)
2. Olena Berg, United States Department of Labor
3. Jim Hill, National Association of State Treasurers
4. Horace Holmes, WJLA-TV, Albritton Communications Company
5. Robert L. Reynolds, Fidelity Investments
6. Anthony R. Amato, Hard Rock Cafe International

10:45am–11:00am Break
11:00am–12:15pm Final Session: Summary of Breakout Group Discussions
12:15pm–1:00pm Closing Session: Thank You and Challenge

Public Participation: Participation is limited to invited delegates.

Notice of Meeting

Notice is hereby given that a National Summit on Retirement Savings will be held on Thursday, June 4, 1998, and Friday, June 5, 1998, at the Hyatt Regency on Capitol Hill, 400 New Jersey Ave., NW, Washington, DC 20001.

Signed at Washington, DC, this 13th day of May, 1998

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–13262 Filed 5–18–98; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 AND 50–318]

Baltimore Gas & Electric Company; Calvert Cliffs Nuclear Power Plant Units 1 and 2; Notice of Acceptance for Docketing of the Application for Renewal of Facility Operating Licenses Nos. DPR–53 and DPR–69 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of operating license Nos. DPR–53 and DPR–69, which authorize Baltimore Gas & Electric Company (BG&E), the applicant, to operate its Calvert Cliffs Nuclear Power Plant (CCNPP), Units 1 and 2 at 2700 megawatts thermal. The renewed licenses would authorize the applicant to operate CCNPP Units 1 and 2 for an additional 20 years beyond the current 40-year period. The current license for Unit 1 expires on July 31, 2014, and the current license for Unit 2 expires on August 13, 2016.

On April 10, 1998, BG&E submitted an application to renew the operating licenses for its CCNPP units. A Notice of Receipt of Application, ''Baltimore Gas & Electric Company; Calvert Cliffs Nuclear Power Plant Units 1 & 2; Notice of Receipt of Application for Renewal of Facility Operating Licenses Nos. DPR–53 and DPR–69 for an Additional 20-Year Period,'' was published in the **Federal Register** on April 27, 1998, (63 FR 20663). The Commission's staff has determined that BG&E has submitted information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is complete and acceptable for docketing. The current Docket Nos. 50–317 and 50–318 for License Nos. DPR–53 and DPR–69 will be retained. If the Commission determines that new license or docket numbers are necessary, any such changes will be published in a subsequent **Federal Register** notice.

The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The license will not be renewed unless the Commission makes the findings required by 10 CFR 54.29. Pursuant to 10 CFR 51.26, as part of the environmental scoping process, the staff intends to hold a public scoping meeting. The details of the public scoping meeting will be included in a future **Federal Register** notice. In addition, the Commission also intends to hold public meetings to discuss the license renewal process and schedule for conducting the review. The Commission will provide prior notice for these meetings.

An opportunity to request a hearing on the application for a renewed license will be the subject of a subsequent **Federal Register** notice.

Detailed information about the license renewal process can be found under the nuclear reactors icon of the NRC's web page, http://www.nrc.gov.

A copy of the application to renew the CCNPP Units 1 and 2 licenses is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037, and the Local Public Document Room for the CCNPP Units 1 and 2 located in the Calvert County Public Library, 30 Duke Street, Prince Frederick, MD 20678.

Dated at Rockville Maryland, this 8th day of May 1998.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, License Renewal Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–13229 Filed 5–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; Zion Nuclear Power Station, Units 1 and 2; Notice of Public Meeting

The NRC will conduct a public meeting at the Zion-Benton High School, 3901 21st Street, Zion, Illinois, on June 1, 1998, to discuss the NRC regulatory process for decommissioning and plans developed by Commonwealth Edison Company (CECo, the licensee) to decommission the Zion Nuclear Power Plant located near Zion, Illinois. Zion-Benton High School is located on the southeast corner of Kenosha Road and 21st Street, Zion, Illinois. Parking is provided in the South Parking Lot at the school. The meeting is scheduled for 7–9:00 p.m. and will be chaired by Dr. Donald Moon, Co-Chairman, Community Advisory Panel and President, Shimer College. The meeting will include a presentation by CECo on their planned decommissioning activities. The NRC staff will make a short presentation on the decommissioning process and NRC programs for monitoring decommissioning activities. There will be an opportunity for members of the public to make comments and ask questions of the NRC staff and CECo representatives after the presentations. The meeting will be transcribed.

Regulatory submittals and responses are available for public inspection at the local public document room, located at the Waukegan Public Library, 128 North County Street, Waukegan, IL 60085 and the Commission Public Document Room, 2120 L Street, NW., Washington, D.C. 20037.

For more information, contact Mr. Anthony W. Markley, Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001, telephone number (301) 415–3165.

Dated at Rockville, Maryland, this 12th day of May 1998.

For The Nuclear Regulatory Commission.

Ramin R. Assa,

Project Manager, Project Directorate III–2, Division of Reactor Program Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–13224 Filed 5–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–63, issued to Niagara Mohawk Power Corporation (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit 1 (NMP1) located in the town of Scriba, Oswego County, New York.

The proposed amendment would change Technical Specifications (TSs) 3/4.6.2, ''Protective Instrumentation,'' to reflect modifications to the initiation instrumentation for the Control Room Air Treatment System. Specifically, TS

Tables 3.6.2l and 4.6.2l, ''Control Room Air Treatment System Initiation,'' would be changed to delete the high radiation signal and substitute the following initiating signals from the Reactor Protection System: (1) low-low reactor water level in the reactor vessel, (2) high steam flow in the main steam line, (3) high temperature in the main steam line tunnel, and (4) high pressure in the reactor drywell. TS Table 3.6.2l would specify setpoints for each of these four initiating parameters ([greater than or equal to] 5 inches-indicator scale, [less than or equal to] 105 psid, [less than or equal to] 200 degrees F, and [less than or equal to] 3.5 psig, respectively). TS Table 3.6.2l would indicate for each of the four parameters that the minimum number of tripped or operable trip systems and the minimum number of operable instrument channels per operable trip system are two, and that the four parameters are required to be operable when the reactor mode switch is in the ''startup'' or ''run'' positions (but not if in the ''shutdown'' or ''refuel'' positions), except that the high drywell pressure signal may be bypassed when necessary for containment inerting. For three of the parameters (low-low reactor water level, high steam flow in the main steam line, and high drywell pressure), TS Table 4.6.2l would require daily sensor checks, quarterly instrument channel tests, and quarterly instrument channel calibrations (except that only the trip circuit need be calibrated and tested at these quarterly frequencies; the primary sensor would be calibrated and tested each operating cycle). For the parameter high temperature in the main steam line tunnel, TS Table 4.6.2l would require an instrument channel test and an instrument channel calibration each operating cycle, not to exceed 24 months. Associated TS ''Bases for 3.4.5 and 4.4.5 Control Room Air Treatment System'' would also be changed to update the system descriptions consistent with these proposed changes to the automatic initiation circuitry, and to reflect the system's manual start capability. These changes to the TS Bases would include deletion of the statements that (1) the Control Room Air Treatment System is designed ''to automatically start upon a receipt of a high radiation signal from one of the two radiation monitors located on the ventilation intake'' and that (2) ''* * * air intake radiation monitors will be calibrated and functionally tested each operating cycle, not to exceed 24 months, to verify system performance.''

During a system design review, the licensee determined that (1) contrary to a commitment in letters to the NRC dated January 31 and March 19, 1984, the NMP1 Control Room Air Treatment System would not automatically initiate during an MSLB [main steam line break] or an LOCA [loss-of-coolant accident], and (2) initiation of the NMP1 Control Room Air Treatment System at the current radiation monitor setpoint of [less than or equal to] 1000 CPM, as required by TS Table 3.6.2l, is not sufficient for compliance with GDC 19 limits for radiological protection of the control room operators. Consequently, on April 21, 1998, the licensee declared the Control Room Air Treatment System inoperable and notified the NRC that a 7 day limiting condition for operation had been entered as specified by TS 3.4.5. On April 27, 1998, the licensee informed the NRC Project Manager that resolution of the inoperability condition would involve modifications more extensive than mere setpoint adjustments, that these modifications should not be implemented while NMP1 is operating, and that the licensee was considering filing an application for an emergency license amendment to allow the modifications to be implemented and the plant restarted after a 7-day outage. NMP1 was shut down on April 28, 1998, in accordance with TS 3.4.5. On May 2, 1998, the licensee filed an application requesting that the NRC amend the NMP1 license by May 8, 1998, on an Emergency basis because ''resumption of operation cannot occur until NRC approval of the proposed change.'' However, on May 11, 1998, the licensee informed the NRC that as a result of the finding by a team of licensee engineers who reviewed the control room ventilation systems, modifications to the NMP1 Control Room Air Treatment System would not be completed and NMP1 determined ready for restart for 2 weeks. Accordingly, the NRC finds that exigent circumstances exist in that the full 30 days normally provided for public comment with respect to the proposed action is not available before NMP1 will be ready to resume power operation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

* * * The proposed modification and associated TS changes involve a system that is intended to detect the symptoms of certain events or accidents and initiate mitigative actions (i.e., the Control Room Air Treatment System). Accordingly, the proposed changes do not affect the probability of any accident initiators previously evaluated. Therefore, the proposed changes will not result in a significant increase in the probability of any accidents previously evaluated.

Currently, TS Table 3.6.2l, ''Control Room Air Treatment System Initiation,'' specifies a setpoint of ''≤1000 CPM'' for Parameter (1), ''High Radiation Ventilation Intake.'' This requires the continuous radiation monitors located in the outside air intake duct of the Control Room Ventilation System to initiate the Control Room Air Treatment System at a detector count rate of ''[less than or equal to] 1000 CPM.'' The setpoint was established to comply with the radiation dose limits specified in 10 CFR 50, Appendix A, General Design Criterion (GDC) 19 and NUREG–0800, ''Standard Review Plan [SRP],'' Section 6.4 for control room habitability during an accident, including a Loss of Coolant Accident (LOCA). In the event of an accident, timely initiation and proper operation of the Control Room Air Treatment System minimizes the amount of airborne radioactivity entering the control room. However, based on the results of a current study, initiation of the Control Room Air Treatment System at this setpoint does not provide assurance that personnel occupying the control room under the most limiting Main Steam Line Break (MSLB) accident assumptions would not receive radiation exposures in excess of the GDC 19 and SRP 6.4 limits. It was further determined that, contrary to a 1984 commitment, the Control Room Air Treatment System would not automatically initiate during a LOCA.

To correct this condition, a modification is proposed that will automatically initiate the Control Room Air Treatment System on either a MSLB or LOCA signal. Spare contacts from the RPS logic circuits will be used to provide the initiation signals. Specifically, MSLB automatic initiation of the system will be on main steam line high flow or main steam line tunnel high temperature, and LOCA automatic initiation of the system will be on high drywell pressure or low-low reactor vessel water level. Implementation of this modification will provide automatic initiation of the Control Room Air Treatment System at the onset of both a MSLB and a LOCA, as previously committed.

The MSLB accident has been evaluated for full power operating conditions where radioactive gases released from the turbine building could be drawn into the Control Room Ventilation System and accumulate in the control room. Engineering calculations show that the Control Room Air Treatment System would maintain the dose to the control room operators below the GDC 19 and SRP 6.4 limits during these releases, and the addition of an anticipatory automatic initiation on a MSLB signal (main steam line high flow or main steam line tunnel high temperature) provides assurance that the consequences of the MSLB accident are bounded by the analysis.

The LOCA analysis assumes that radioactive gases are released from the elevated stack and are then drawn back down into the Control Room Ventilation System intake duct. Analysis shows that for the bounding condition, the accumulated dose in the control room for a minimum of 30 days would not be detected by the Control Room Air Treatment System radiation monitors, even at a significantly reduced setpoint. Consequently, the radiation monitors cannot be relied upon to initiate the Control Room Air Treatment System in the event of a LOCA. As a result, an anticipatory automatic initiation of the Control Room Air Treatment System on a LOCA signal (high drywell pressure or low-low reactor vessel water level) is proposed to be added to provide assurance that personnel occupying the control room under the most limiting LOCA assumptions will not receive radiation exposures in excess of the GDC 19 and SRP 6.4 limits.

NMPC has also proposed to delete the requirement to have the Control Room Air Treatment System automatically initiate on a high radiation signal when the reactor mode switch is in the ''Refuel'' position. This change is acceptable based on 1) neither a LOCA or MSLB is assumed to occur in refuel; 2) for accidents assumed to occur during refueling (fuel handling accident), GDC 19 and SRP 6.4 limits are met without the Control Room Air Treatment System; and 3) the Control Room Air Treatment System can be manually initiated.

In summary, the proposed changes for the Control Room Air Treatment System initiation channels will assure that the NMP1 control room operators will not receive radiation exposures in excess of the limits delineated in GDC 19 and SRP 6.4. Accordingly, the operators will be able to respond to and mitigate the consequences of anticipated accident scenarios. Therefore, the proposed changes will not involve a significant increase in the consequences of an accident previously evaluated.

2. *The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.*

* * * The proposed changes do not introduce any new accident initiators and do not involve any alterations to plant configurations which could initiate a new or different kind of accident. The actuation circuit of the Control Room Air Treatment System actuation logic does not control or interface with any primary reactor processes. Addition of the MSLB logic and the LOCA logic will ensure that the Control Room Air Treatment System initiates such that habitability of the control room is not compromised. No new failure modes to existing systems or equipment important to safety are created by this change. Post-installation testing will confirm that the new logic will have no effect on other safety-related circuits and TS required surveillance testing will routinely confirm operability of the Control Room Air Treatment System. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. *The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.*

The proposed changes to Sections 3.6.2 and 4.6.2 incorporate modifications to the initiation instrumentation for the Control Room Air Treatment System. * * * As a result of these changes, the requirement to have the Control Room Air Treatment System automatically initiate on a high radiation signal when the reactor mode switch is in the ''Refuel'' position has been deleted. * * *

The addition of the trip circuit logic from the MSLB accident as well as from the LOCA circuits assures that the control room operator will not be exposed to radiation limits in excess of GDC 19 or SRP 6.4 limits. Additionally, the initiation signal will be automatic at the onset of both accidents, which improves the response time of the Control Room Air Treatment System to the MSLB accident and the LOCA. NMPC has proposed to delete the requirement to have the Control Room Air Treatment System automatically initiate on a high radiation signal when the reactor mode switch is in the ''Refuel'' position. This change is acceptable based on (1) neither a LOCA nor MSLB is assumed to occur in refuel; (2) for accidents assumed to occur during refueling (fuel handling accident) GDC 19 and SRP 6.4 limits are met without the Control Room Air Treatment System; and (3) the Control Room Air Treatment System can be manually initiated.

In summary, the proposed changes will assure that the Control Room dose established in GDC 19 and SRP 6.4 will not be exceeded. Therefore, the proposed activity does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 1, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 2, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 12th day of May, 1998.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–13187 Filed 5–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

In the Matter of Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit Nos. 1 and 2); Exemption

I

Wisconsin Electric Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–24 and DPR–27, which authorize operation of the Point Beach Nuclear Plant, Units 1 and 2, respectively. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors located at the licensee's site in Manitowoc County, Wisconsin.

II

The Code of Federal Regulations at 10 CFR 50.48, ''Fire Protection,'' requires that nuclear power plants licensed to operate prior to January 1, 1979, meet Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' Sections III.G, III.J, and III.O. Appendix R, Section III.J, ''Emergency Lighting,'' requires that ''Emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.'' Equipment needed for safe shutdown after a fire at Point Beach Nuclear Plant is maintained inside the main power block and several buildings onsite. Emergency lighting is provided inside these buildings for areas needed for operation of safe shutdown equipment and for access and egress routes in accordance with 10 CFR part 50, Appendix R, Section III.J. However, no emergency lighting meeting Section III.J requirements has been installed for outdoor routes between these buildings. Because of cost and maintenance considerations, and after determining that application of Section III.J was not necessary to achieve the underlying purpose of the rule, the licensee submitted an exemption request with respect to these outdoor routes.

The requested exemption from the requirements of Appendix R, Section III.J, would allow the use of hand-held portable lights, in the event that sufficient daylight, normal lighting, or security lighting is not available, when transiting (access and egress routes) between the main power block and buildings separated from the main power block, namely, the diesel generator building (G–03 and G–04), 13.8 kV switchgear building, service water and fire pump house, fuel oil pump house, gas turbine building, and warehouse 3. These buildings contain equipment relied upon in the detailed fire plans to mitigate the consequences of a fire that could affect the capability to place the reactor in cold shutdown. As stated above, emergency lighting is maintained within these structures as required by Appendix R, Section III.J. However, access and egress between these buildings and the main power block require walking outdoors. The areas outside of and between these buildings are paved, commonly used for vehicular traffic, and are maintained clear of snow and other obstructions.

In the worst-case scenarios that postulate a fire concurrent with a loss of offsite power, the hand-held, battery-powered, portable lighting units currently maintained on site in four ''abnormal operating procedure'' (AOP) packs located in the control room and additional hand-held, battery-powered, portable lighting units maintained by operations personnel would be used, under the proposed exemption, by the operations staff to allow transit between buildings to safely perform the functions required by the fire plans and operations procedures. Each of the four AOP packs contain a hand-held, battery-powered, portable lighting unit in addition to tools. Each hand-held, battery-powered, portable lighting unit is verified to be operable in a monthly surveillance and the batteries are replaced every 6 months.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to the public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of 10 CFR part 50, Appendix R, Section III.J, is to provide adequate illumination to assure the capability of performing all necessary safe shutdown functions, as well as to assure personnel movement to and from the equipment and components that must be manually operated by plant personnel to effect safe shutdown during emergencies. In addition, the illumination must have a capability to allow sufficient time for normal lighting to be restored.

To achieve safe shutdown during a plant emergency, personnel may be required to go to and from buildings outside the main power block to control equipment locally, monitor equipment status, or obtain equipment, such as fans or repair materials. Any equipment that would need to be obtained could be carried with one hand or, if necessary, transported on wheeled carts. In the latter case, a minimum of two individuals would be available, one of whom could provide the necessary lighting if needed.

The availability of hand-held, battery-powered portable lights would serve the underlying purpose of the rule with respect to transit between the main power block and the separate buildings identified above, in that the use of such hand-held lights would provide adequate illumination to permit access to and egress from buildings containing safe shutdown equipment and components, yet would not significantly hinder the transportation of equipment if such is necessary during a plant emergency. In addition, such hand-held lights would be available for use during an 8-hour period contemplated by the regulation.

On the basis of its evaluation, the staff concludes that with the availability of hand-held battery-powered portable lights for use during transit between site structures described above, the installation of emergency lighting units with at least an 8-hour battery power supply for these transit routes is not necessary to achieve the underlying purpose of Section III.J of Appendix R to 10 CFR part 50. The licensee's request for an exemption from the requirements of Section III.J to 10 CFR part 50 to allow the use of alternative means of lighting for access and egress routes between the main power block and the diesel generator building, 13.8 kV switchgear building, service water and fire pump house, fuel oil pump house, gas turbine building, and warehouse 3 is acceptable to the staff.

IV

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12, that this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are

present in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the Commission hereby grants the Wisconsin Electric Power Company an exemption from the requirements of 10 CFR part 50, Appendix R, Section III.J, with respect to access and egress routes between the main power block and the diesel generator building, 13.8 kV switchgear building, service water and fire pump house, fuel oil pump house, gas turbine building, and warehouse 3 at Point Beach Nuclear Plant, Units 1 and 2, to the extent alternative means of lighting as described herein are available.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (62 FR 46381).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of April 1998.

For The Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–13189 Filed 5–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses Nos. DPR–53 and DPR–69, issued to Baltimore Gas and Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the Technical Specifications (TSs) to reduce the minimum Reactor Coolant System (RCS) total flow rate from 370,000 gpm to 340,000 gpm; reduce the Reactor Protective Instrumentation trip setpoint for Reactor Coolant Flow—Low from greater than or equal to 95% to greater than or equal to 92% of design reactor coolant flow; adjust the reactor core thermal margin safety limit lines to reflect the reduced RCS flow rate; and reduce the lift setting range for the eight Main Steam Safety Valves (MSSVs) with the highest allowable lift setting from the current range of 935 to 1065 psig to a more restrictive range of 935 to 1050 psig. In addition to the changes to the TSs necessary to support an increased number of plugged steam generator tubes, reanalysis of the accident analyses affected by this change identified an Unreviewed Safety Question (USQ) associated with these changes. The USQ results from the determination that the Seized Rotor Event analysis involves an increased percentage of failed fuel cladding. Finally, four reanalyzed events Main Steamline Break (MSLB), Steam Generator Tube Rupture (SGTR) Loss of Coolant Flow, and Boron Dilution) require Nuclear Regulatory Commission approval due to changes to the methodology or assumptions used to analyze these events.

The proposed action is in accordance with the licensee's application for amendment dated January 31, 1997, as supplemented by letters dated February 13, February 28, March 25, April 16, August 16, and September 29, 1997, and January 22, March 17, April 8, and April 21, 1998.

The Need for the Proposed Action

During the 1998 Unit 1 refueling outage, Baltimore Gas and Electric Company (BGE) will perform extensive steam generator tube inspections. Tubes that experience excessive degradation reduce the integrity of the primary-to-secondary pressure boundary. Eddy current examination is used to measure the extent of tube degradation. When the reduction in the tube wall thickness reaches the plugging or repair limit, as specified in the Technical Specifications, the tube is considered defective and a corrective action is taken.

Currently, the Calvert Cliffs TSs allow defective tubes to be plugged and removed from service, or to be repaired using welded sleeving techniques developed by Westinghouse Electric Corporation or Combustion Engineering, Inc. The most widely used tube maintenance technique at many pressurized water reactors, including Calvert Cliffs, is removal of the degraded tube from service by installing plugs at both ends of the tube. The installation of steam generator tube plugs removes the heat transfer surface of the plugged tube from service, and the increased flow resistance leads to a reduction in the primary coolant flow available for core cooling. The minimum primary coolant flow requirements in the TSs are based upon operation with no more than 800 plugged tubes in each steam generator. There is a possibility that the results of steam generator tube inspections in the upcoming refueling outage will necessitate exceeding the 800 plugged tube criteria in at least one of the Unit 1 steam generators. If this is the case, BGE will require implementation of the proposed TSs changes and approval of the USQ prior to Mode 2 entry following the 1998 Unit 1 refueling outage.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not have a significant effect on the quality of the human environment. To the extent there is any environmental impact from increasing the number of plugged steam generator tubes, such impact results from the increased RCS temperature and the reduced RCS flow rate expected to result from this activity. Reanalysis of the Seized Rotor Event analyses has indicated a greater percentage of fuel pin failures would be expected during these postulated accidents due to the revised coolant temperature and flow rates; the increased number of plugged tubes results in an increase in offsite releases, relative to past analyses.

The licensee's results of the MSLB event reanalysis with reduced RCS flow indicate a reduction in the 0–2 hour thyroid dose at the Exclusion Area Boundary (EAB) from 81 rem to 5 rem, and a decrease in the 0–2 hour whole body dose at the EAB from 0.3 rem to 0.2 rem. The licensee's results of the Seized Rotor Event reanalysis indicate the resultant 0–2 hour EAB thyroid dose increases from 3.6 rem to 12 rem, whereas the whole body dose at the EAB is reduced from 0.4 rem to 0.2 rem. The licensee presented, for the first time, doses at the low population zone (LPZ) for the MSLB and the Seized Rotor Events. These doses were 1.2 rem thyroid and 0.04 rem whole body for the MSLB and 1.0 rem thyroid and 0.04 rem whole body for the Seized Rotor Event. The guideline dose limits for accidents involving fuel failure are the 10 CFR Part 100 limits of 300 rem to the thyroid and 25 rem to the whole body.

The licensee presented the results of an SGTR analysis. Two cases were presented. The first case was based upon primary coolant being at the 100 hour technical specification value for dose equivalent ^{131}I of 1 μCI/g and iodine spiking factor of 500. The

licensee calculated the thyroid and whole body doses at the EAB as 13 rem and 0.55 rem, respectively.

The LPZ doses, which were reported for the first time by the licensee, were calculated as 5 rem thyroid and 0.15 whole body. The second case, which was evaluated, assumed primary coolant was at the maximum instantaneous technical specification value of dose equivalent ^{131}I of 60μCi/g. The results of this case were presented for the first time. The licensee calculated the doses at the EAB as 22 rem thyroid and 0.66 rem whole body. The LPZ doses were calculated as 6 rem thyroid and 0.18 rem whole body.

Even though there is some increase in dose for the Seized Rotor Event, the actual total dose is a fraction of the limits of 10 CFR part 100, as noted above, and there is a low probability of these accidents. This change does not significantly affect the risk of any dominant accident scenario, and the effect on overall risk of an accident at Calvert Cliffs Nuclear Power Plant is insignificant. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

The staff has performed confirmatory calculations of the consequences of an MSLB, SGTR and Seized Rotor Events. The staff has confirmed that the consequences of these accidents will result in offsite doses which are a small fraction of the 10 CFR part 100 dose guidelines. In addition, the staff has determined that the proposed action will not result in an increase in normal radiological effluents from the Calvert Cliffs Nuclear Power Plant such that 10 CFR part 20 and Appendix I to 10 CFR part 50 will continue to be met.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The principal alternative to approving the license amendment request needed to allow plugging up to 2500 tubes per steam generator would be to deny the request and retain the current coolant flow limitations. However, this alternative could reduce operational flexibility as it may prevent a Unit 1 start-up following the upcoming refueling outage, if the steam generator tube inspections necessitate plugging greater than 800 tubes in either of the unit's two steam generators. Furthermore, denial of the amendment would not significantly enhance the protection of the environment as the impacts of this alternative and the proposed action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 dated April 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on May 5, 1998, the staff consulted with the Maryland State official, Richard I. McLean of the Maryland Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 31, 1997, as supplemented by letters dated February 13, February 28, March 25, April 16, August 16, and September 29, 1997, and January 22, March 17, April 8, and April 21, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 12th day of May 1998.

For The Nuclear Regulatory Commission.

S. Singh Bajwa,

Director, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–13188 Filed 5–18–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Year 2000 Readiness of Computer Systems at Nuclear Power Plants; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 98–01 to all holders of operating licenses for nuclear power plants, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, to require the submittal of written responses that will give the NRC the necessary assurance that addressees are effectively addressing the year 2000 (Y2K) problem in computer systems at their respective facilities. Simply stated, the Y2K problem pertains to the potential for a system or an application to experience date-related problems, such as misreading ''00'' as the year 1900 rather than 2000. This generic letter requires the following information from addressees, under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f): (1) Written confirmation that each addressee is implementing an effective plan to address the Y2K problem and provide for safe operation of their respective facilities prior to January 1, 2000, and (2) written certification that the facilities are Y2K ready with regard to compliance with the terms and conditions of the facility licenses and NRC regulations.

The generic letter is a ''rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C., Chapter 8). The staff has received confirmation from the Office of Management and Budget that the generic letter is a non-major rule.

The generic letter is available in the NRC Public Document Room under accession number 9805050192.

DATES: The generic letter was issued on May 11, 1998.

ADDRESSEES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Matthew Chiramal, at (301) 415–2845.

SUPPLEMENTARY INFORMATION: This generic letter only requires information from addressees under the provisions of Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). The generic letter does not constitute a backfit as defined in 10 CFR 50.109(a)(1) since it does not impose modifications of or additions to

structures, systems or components or to design or operation of an addressee's facility. It also does not impose an interpretation of the Commission's rules that is either new or different from a previous staff position. The staff, therefore, has not performed a backfit analysis.

Dated at Rockville, Maryland, this 11th day of May 1998.

For The Nuclear Regulatory Commission.

David B. Matthews,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–13190 Filed 5–18–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39985; File No. SR–NASD–98–28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Approval of Research Reports

May 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 27, 1998, the NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 2210, ''Communications with the Public,'' of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to permit the approval of research reports by a supervisory analyst acceptable to the New York Stock Exchange (''NYSE;'') under NYSE Rule 344, ''Supervisory Analysts,''[2] to satisfy NASD requirements that research reports be approved by a registered principal. Below is the text of the proposed rule change. Proposed new language is in italics.

2200. Communications with Customers and the Public

2210. Communications with the Public

* * * * *

(b) Approval and Recordkeeping.

(1) Each item of advertising and sales literature shall be approved by signature or initial, prior to use or filing with the Association, by a registered principal of the member. *This requirement may be met, only with respect to corporate debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.*

* * * * *

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. *Background.* Subparagraph (b)(1) to NASD Rule 2210 regarding Communications with the Public requires each item of advertising and sales literature to be approved by signature or initial of a registered principal of an NASD member prior to use or filing with NASD Regulation. The definition of ''sales literature'' in subparagraph (a)(2) to NASD Rule 2210 includes research reports.

Paragraph (b) to NYSE Rule 472, ''Communications with the Public,'' requires that research reports be prepared or approved by a supervisory analyst acceptable to the NYSE under NYSE Rule 334. NYSE Rule 472, Supplementary Material .10 defines ''research reports'' as ''* * * an analysis of individual companies, industries, market conditions, securities or other investment vehicles which provide information reasonably sufficient upon which to base an investment decision.'' In order to become a supervisory analyst under NYSE Rule 344, an applicant may present evidence of appropriate experience and either (i) pass an NYSE Supervisory Analysts Examination, or (ii) successfully complete a specified level of the Chartered Financial Analysts Examination prescribed by the NYSE and pass only that portion of the NYSE Supervisory Analysts Examination dealing with Exchange rules on research standards and related matters.[3]

A joint NASD/NYSE member raised the issue of whether the approval of research reports by a supervisory analyst approved by the NYSE under NYSE Rule 344 could satisfy the NASD requirement that each item of advertising and sales literature be approved by signature or initial of a registered principal prior to use or filing with NASD Regulation.

b. *Discussion.* The NYSE designation of ''supervisory analyst'' does not constitute a registration category for NASD principals. The NASD Regulation staff reviewed the content outline for the supervisory analyst examination. The particular categories of securities addressed in the ''securities analysis'' section of the outline are fixed income securities and equity securities. The NASD Regulation staff concluded that the coverage in the supervisory analysts examination of the NYSE communication rules is comparable to the communication materials covered in the NASD principal examination. Thus, NASD Regulation believes that with respect to the level of training and experience necessary for the review of research reports on debt and equity, the level of supervisory analyst registration is comparable to the level of NASD principal registration.

Given that the scope of approval authority is limited to research reports and that the material in the NYSE supervisory analyst examination and the NASD principal examination is comparable in this area, the NASD Regulation staff concluded that the investor protection goals intended by the NASD's current principal review requirement rule could be satisfied by NYSE requirements in this area.

The proposed rule change amends subparagraph (b)(1) to NASD Rule 2210 to state that the requirement that advertising and sales literature be approved by a registered principal of an NASD member firm may be met, with respect to corporate debt and equity securities that are the subject of research

[1] 15 U.S.C. 78s(b)(1).

[2] NYSE Rule 344 states that ''Supervisory Analysts * * * shall be acceptable to, and approved by, the Exchange.'' NYSE Rule 344, Supplementary Material .10 sets forth qualifications to be considered by the Exchange.

[3] *See* NYSE Rule 344, Supplementary Material .10.

reports as that term is defined in NYSE Rule 472, by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344. Any other material requiring supervisory approval would continue to require approval by an NASD registered principal.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[4] of the Act, which require that the rules of the Association be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that the proposed rule change, by permitting approval of research reports by a supervisory analyst to satisfy NASD principal approval requirements of such reports according to standards comparable to the NASD requirements, preserves the investor protection goals of the NASD rules and eliminates duplicative regulatory requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD Regulation has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate, up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file a copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–28 and should be submitted by June 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–13183 Filed 5–18–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78*o*–3.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39981; File No. SR–NYSE–98–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Rule 97, ''Limitation on Members' Trading Because of Block Positioning,'' To Except Transactions That Facilitate Certain Customer Stock Transactions, and To Except Certain Transactions Made To Rebalance an Index Portfolio

May 11, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 30, 1998, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Item I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Exchange Rule 97, ''Limitation on Members' Trading Because of Block Positioning,'' to except transactions that facilitate certain customer transactions in: (i) basket of stock; (ii) blocks of stock; (iii) specific stocks within a basket of stocks; and (iv) index component stocks. The proposal would also would except certain transactions made to rebalance an index portfolio.

The following is the text of Exchange Rule 97 marked to reflect the proposed rule change. Additions to the current text appear in italics while deletions appear in brackets.

Limitation on Members' Trading Because of Block Positioning

Rule 97 (a) When a member organization holds any part of a long position in a stock in its trading account resulting from a block transaction it effected with a customer, such member organization may not effect the following transactions for any account in which it has a direct or indirect interest for the remainder of the trading day on which it acquired such position:

(i) a purchase on a ''plus'' tick if such purchase would result in a new daily high;

(ii) a purchase on a ''plus'' tick within one-half hour of the close;

(iii) a purchase on a ''plus'' tick at a price higher than the lowest price at which any block was acquired in a previous transaction on that day; or

(iv) a purchase on a ''zero plus'' tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day.

For purposes of the restrictions in subparagraph (iii) and (iv) above, in the case where more than one block was acquired during the day, the lowest price of any such block will be the governing price.

(b) The provisions of paragraph (a) shall not apply to transactions made:

(1) For bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.;

(2) To offset a transaction made in error;

(3) To facilitate the conversion of options;

(4) By specialists in the stocks in which they are registered; [or]

(5) To facilitate the sale of a block of stock *or a basket of stocks* by a customer[.]*;*

(6) To facilitate an existing customer's order for the purchase of a block of stock, or a specific stock within a basket of stocks, or a stock which is being added to or reweighed in an index, at or after the close of trading on the Exchange, provided that the facilitating transactions are recorded as such and the transactions in the aggregate do not exceed the number of shares required to facilitate the customer's order for such stock; or

(7) Due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio.

Supplementary Material

.10 Definitions. A block positioner is a member organization which engages, either regularly or on an intermittent basis, in a course of business of acquiring positions to facilitate the handling of customers; order's on the Floor of the Exchange. For the purposes of this Rule, a block shall mean a quantity of stock having a market value of $500,000 or more which is acquired by a number organization on its own behalf and/or others from one or more buyers or sellers in a single transaction.

For purposes of this Rule, a ''basket of stocks'' shall mean a group of 15 or more stocks having a total market value of $1 million or more.

For purposes of this Rule, an ''index'' shall mean a publicly disseminated statistical composite measure based on the price of market value of the component stocks in a group of stocks.

.20–.50 No change.

II. Self-Regulatory Organizations'; Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the Exchange included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 97 currently prohibits a member organization that holds any part of a long stock position in its trading account, which position resulted from a block transaction it effected with a customer, from purchasing for an account in which it (*i.e.*, the block positioning member organization) has a direct or indirect interest, additional shares of each stock on a ''plus'' or ''zero plus'' tick under certain conditions for the remainder of the trading day on which the member organization acquired the long position. Under Exchange Rule 97, the term ''block'' is defined as a quantity of stock having a market value of $500,000 or more that was acquired in a single transaction.

The restrictions in Exchange Rule 97 presently do not apply to transactions that: (i) involve bona fide arbitrage or the purchase and sale (or sale and purchase) of securities of companies involved in a publicly announced merger, acquisition, consolidation or tender offer; (ii) offset transaction made in error; (iii) facilitate the conversion of options; (iv) are engaged in by specialists in their specialty stocks; or (v) facilitate the sale of a block of stock by a customer.

Exchange Rule 97 was adopted to address concerns that a member organization might engage in manipulative practices by attempting to ''mark-up'' the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired. The ''tick'' restrictions of Exchange Rule 97 are designed to address these specific concerns. The current exceptions under Exchange Rule 97 permit certain types of purchases that are effected for a permitted purpose, but do not include transactions solely effected to increase the block positioner's position.

The Exchange seeks to amend Exchange Rule 97 to provide certain additional exceptions. The proposed additional exceptions would apply to purchases by the block positioning member organization that increase a position in order to: (i) facilitate the sale of a basket of stocks by a customer; and (ii) facilitate an existing customer's order for the purchase of a block of stock, a specific stock within a basket of stocks, or a stock being added to or reweighted in an index, at or after the close of trading on the Exchange. The proposal requires that these facilitating transactions be recorded as such and the transactions in the aggregate may not exceed the number of shares required to facilitate the customer's order for such stock. Finally, the proposal would add an exception for transactions made due to a stock's addition to an index or an increase in a stock's weight in an index provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the index portfolio.

With respect to revised paragraph (b)(5), the proposal would extend the exception, which currently applies to a subsequent facilitation trade of block size ,to a facilitation trade of less than block size provided that the stock was part of a ''basket'' of stocks being sold by a customer. Proposed Supplementary Material .10, ''Definitions,'' defines the term ''basket'' as a group of 15 or more stocks having a market value of one million dollars or more.

As to proposed paragraph (b)(6), the proposal would permit a block positioner to purchase stock to increase its position up to the amount required to facilitate a customer's purchase at the close or after-hours of a block of stock, a specific stock within a basket of stocks, or a stock being added to or reweighted in an index, provided the firm has an existing customer's order for the at-the-close or after-hours purchase. This provision will permit a member organization to position stock to effect a cross with a customer at or after the close. The proprietary purchase would be required to be recorded in a manner which identifies them as transactions entered into for the purpose of facilitating the customer buy transaction. Also, the transactions in the aggregate could not exceed the number of shares required to facilitate the customer's order.

The block positioner's purchases exempted under proposed paragraph (b)(6) would, however, remain subject to the limitations on positioning to facilitate customer orders as discussed in Exchange Information Memorandum No. 95–28, ''Positioning to Facilitate Customer Orders.'' [2] These limitations generally preclude a block positioner, that has committed to sell securities after the close to a customer at the closing price, from being in the market on a proprietary basis after 3:40 p.m. when it has left a portion of its positioning to be executed at the close, and such at-the-close proprietary order can be reasonably expected to impact the closing price.

Finally, with regard to proposed paragraph (b)(7), the proposal would allow a block positioner to increase its proprietary portion in a stock where such stock is being added to an index or its weight in an index is being increased. However, purchases in the

[2] *See* Securities Exchange Act Release No. 35837 (June 12, 1995), 60 FR 31749 (June 16, 1995).

aggregate may not exceed the number of shares required to rebalance an index portfolio.

The Exchange believes the proposed exceptions in paragraphs (b)(5) and (b)(6) to facilitate certain customer transactions are appropriate because these types of transactions are effected to accommodate a customer. The Exchange further believes the proposed exception in paragraph (b)(7) for additions to, or increased weigh in, an index is appropriate because such purchases are usually made at the close of trading to obtain the closing price of the index and therefore are indifferent to the price level so long as it represents the closing valuation.

The proposal also would expand the Rule's Supplementary Material, Section .10, ''Definitions,'' to provide definitions for the terms ''basket'' and ''index,'' which terms are used in proposed paragraphs (b)(5), (b)(6), and (b)(7). The term ''basket'' would be defined as a group of 15 or more stocks having a total market value of $1 million or more. The Exchange has represented that this definition is consistent with the use of ''basket'' in the definition of program trading that appears in Exchange Rule 80A. The proposal would define ''index'' as a publicly disseminated statistical composite measure based on the price or market value of the component stocks in a group of stocks. The Exchange believes this definition would preclude the possibility of a firm creating an ''index'' for the purpose of circumventing the restrictions of the Rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act [3] in that it is designed to facilitate transactions in securities, and remove impediment to and perfect the mechanism of a free and open market. The Exchange believes the proposed rule change would permit trading by member organizations, when appropriate, to facilitate customer trading, and would thereby add depth, liquidity, and quality to the market for Exchange-traded securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington D.C. 20549. Copies of the submissions, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–11 and should be submitted by June 9, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–13182 Filed 5–18–98; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Servant Air, Inc. for New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 98–5–21) Docket OST–97–3022.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Servant Air, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail, using aircraft with no more than nine passenger seats.

DATES: Persons wishing to file objections should do so no later than June 2, 1998.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–97–3022 and addressed to the Department of Transportation Dockets SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: May 13, 1998.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–13181 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program and Determination on Revised Noise Exposure Maps

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on a new noise compatibility program for Charlotte/Douglas International Airport submitted by the City of Charlotte, North Carolina, under the provisions of Title I of the Aviation Safety and Noise Abatement act of 1979

(Pub. L. 96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On September 30, 1997, the FAA determined that the noise exposure maps, submitted by the City of Charlotte under 14 CFR Part 150 were in compliance with applicable requirements. On March 30, 1998, the Administrator approved the new noise compatibility program for Charlotte/Douglas International Airport. This new study revised and updated the existing noise compatibility program that was approved by the FAA on May 18, 1990. The City of Charlotte has also requested under Part 150, Section 150.35(f), that FAA determine that revised noise exposure maps submitted with the noise compatibility program and showing noise contours as a result of the implementation of the noise compatibility program are in compliance with applicable requirements of FAR Part 150. The FAA announces its determination that the revised noise exposure maps for Charlotte/Douglas International Airport for the years submitted with the noise compatibility program are in compliance with applicable requirements of FAR Part 150 effective April 28, 1998.

EFFECTIVE DATE: The effective date of the FAA's approval of the new noise compatibility program for Charlotte/Douglas International Airport is March 30, 1998. The effective date of the FAA's determination on the revised noise exposure maps is April 28, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas M. Roberts; Atlanta Airports District Office; Federal Aviation Administration; Campus Building; 1701 Columbia Avenue, Suite 2–260; College Park, Georgia 30337–2747, Telephone 404/305–7153. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to a new noise compatibility program for Charlotte/Douglas International Airport, effective March 30, 1998. This new study revises and updates an existing noise compatibility program approved by the FAA on May 18, 1990. Under Section 104(a) of the Act an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local, not a federal, program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of the Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

1. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150.

2. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

3. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

4. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of the airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environment assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Atlanta Airports District Office in Atlanta, Georgia.

The City of Charlotte, North Carolina, submitted to the FAA on August 26, 1997, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility study. The Charlotte/Douglas International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on September 30, 1997. Notice of this determination was published in the **Federal Register** on October 17, 1997.

The Charlotte/Douglas International Airport study contains a proposed noise compatibility program consisting in part of measures that were implemented under the approved 1990 noise compatibility program, as amended. These measures are recommended for continuation. New measures are recommended which may be initiated before or immediately upon approval of the program by the FAA. Additional measures are recommended to further abate noise or mitigate its effect on persons and noise-sensitive land uses. These measures are divided into Phase I and Phase II implementation programs. Phase I assumes no further runway development. Phase II assumes the construction of the proposed third parallel runway and the extension of runway 18R/36L. The proposed third parallel runway and the extension to runway 18R/36L are included in the Part 150 analysis because FAA guidelines require the inclusion of all development projects anticipated to occur within the next 5 years. The noise compatibility program measures are divided into noise abatement (air traffic), land use (preventive) and noise mitigation (corrective) actions. It was requested that the FAA evaluate and approve this material as a noise computability program as described in Section 104(b) of the Act. The FAA begin its review of the program on September 30, 1997, and was required by a provision of the Act to approve or disapprove such program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180 days shall be deemed to be an approval of such program.

Phase I of the submitted program contained seven noise abatement measures, which consist of two continuations, two deletions, and three additions to the approved 1990 noise compatibility program; nine land use measures, which consist of three

continuations, three deletions, and three additions to the approved 1990 noise compatibility program; and seven noise mitigation measures, which consist of four continuations, one completion, and two additions to the 1990 noise compatibility program. Phase II of the submitted program contained two new noise abatement measures and two new noise mitigation measures. The FAA completed its review and determined that the procedural and substantive requirements of the Act and Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator, effective March 30, 1998.

Of the overall 21 specific measures requiring federal action, 19 were approved without exception. Two land use measures were partially approved subject to the recommendation related to the introduction of noncompatible residential development is not meeting Part 150 criteria. The approved measures included such items as: the continuation of periodic noise monitoring, provision for monthly reports on late night (11 p.m. to 7 a.m.) runway utilization, variance from noise compatibility program assumptions to the Tower and frequent nighttime users; designation of runways 18R and 18L as the preferred for takeoffs by turbojet and large four-engine prop aircraft between 11 p.m. and 7 a.m. when runway 23 or runway 5 cannot be used for reasons of wind, weather, operational necessity, or required runway length; designation of locations and procedures for engine runups; modification to current operating procedures for turbojet and large four-engine prop aircraft departing runways 36R and 36L to initiate turns at 2.5 and 2.6 DME north of the CLT VOR/DME respectively; continuation of the 1990 noise compatibility program land use planning which recommends amending local land use planning policies to reduce the development of noncompatible land uses within the airport environs; continuation of the 1990 noise compatibility program land use measure to rezone undeveloped property to airport compatible land use and limit the density of residential development permitted within noise contours; dedication of avigation easement as a condition of approval for the development of property located in the airport environs; pursuit of the establishment of an airport overlay district that corresponds to the airport environs; pursuit of an amendment of the state building code to authorize the City of Charlotte and Mecklenburg County to raise the minimum building standards (noise level reduction) for new residential construction in the airport overlay district; development of the full disclosure of property location within the airport environs for potential buyers; continuation of the public information program that is a part of the approval 1990 noise compatibility program; continuation of the sound insulation program for sensitive public buildings used for instruction (schools) and assembly (churches) within the 65 DNL contour; continuation of the sound insulation program of residential property within the 65 DNL contour; within the 70–75 DNL noise contour, offers of purchase assurance, sound insulation of residences, purchase of aviation easements or acquisition of noncompatibility property; acquisition of mobile homes located within the 70 DNL noise contour; exercise of the option to purchase avigation easement, sound insulate or acquire homes within the 65 DNL noise contours where sound insulation is infeasible or not cost effective; establishment of departure turn for third parallel runway 17; establishment of departure turn for the third parallel runway 35; insulation of eligible dwellings within the 2001 noise compatibility program/noise exposure map 65 DNL noise contour, and acquisition of mobile homes within the 65 DNL noise contour of the 2001 noise compatibility program/noise exposure map. These determinations are set forth in detail in the Record of Approval endorsed by the Administrator on March 30, 1998.00000

The FAA also has completed its review of the revised noise exposure maps and related descriptions submitted by the City of Charlotte. The specific maps under consideration are dated February 27, 1998, in the submission. The FAA has determined that these maps for the Charlotte/Douglas International Airport are in compliance with applicable requirements. This determination is effective April 28, 1998. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the data, information or plans.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps, and copies of the record of approval and other evaluation materials and documents which comprised the submittal to the FAA are available for examination at the following locations:

Federal Aviation Administration, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

Mr. T.J. Orr, Aviation Director, Charlotte/Douglas International Airport, Charlotte, North Carolina.

Questions on either of these FAA determinations may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Atlanta, Georgia on April 28, 1998.

Dell T. Jernigan,

Manager, Atlanta Airports District Office, ATL–ADO.

[FR Doc. 98–13264 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–9]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application,

processing, and disposition of petitions for exemptions (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 8, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 13, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29168.
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.417(c)(2)(i)(A).
Description of Relief Sought: To permit Continental and Continental Micronesia to use video-based differences training in lieu of physical hands-on training to accomplish the training and qualification of crewmembers on the automatic Type III emergency overwing exits installed on Boeing 737–600, –700, and –800 airplanes, when the crewmembers previously have been trained and qualified on Type III emergency overwing exits installed on other versions of Boeing 737 aircraft.

Docket No.: 29166.
Petitioner: Roger Aviation Company.
Sections of the FAR Affected: 14 CFR 142.15(d).
Description of Relief Sought: To permit Roger Aviation Company to conduct simulator training under part 142 with a Frasca 242 flight training device (FTD) without that FTD meeting the requirements of an advanced FTD as defined in § 142.3.

Dispositions of Petitions

Docket No.: 27307.
Petitioner: Comair Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1) and appendix F to part 121.
Description of Relief Sought/ Disposition: To permit Comair to combine recurrent flight and ground training and proficiency checks for its pilots in a single annual training and proficiency evaluation program.
Grant, April 30, 1998, Exemption No. 5734C.

Docket No.: 29173.
Petitioner: Captain Joe R. McCabe.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit the petitioner to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.
Denial, April 20, 1998, Exemption No. 6757.

Docket No.: 28174.
Petitioner: Air Carriage.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate certain aircraft under the provisions of part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, April 20, 1998, Exemption No. 6108A.

Docket No.: 28597.
Petitioner: U.S. Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit U.S. Helicopters to operate certain aircraft under the provisions of part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. In addition, in your letter, you include a revised list of aircraft to be covered by the extension.
Grant, April 20, 1998, Exemption No. 6452A.

Docket No.: 29167.
Petitioner: Captain David F. Specht.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit the petitioner to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.
Denial, April 20, 1998, Exemption No. 6755.

Docket No.: 29171.
Petitioner: Mr. Thomas Bentley.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought/ Disposition: To permit the petitioner to act as a pilot in operations conducted under part 121 after reaching your 60th birthday.
Denial, April 20, 1998, Exemption No. 6756.

Docket No.: 25550.
Petitioner: Department of the Army.
Sections of the FAR Affected: 14 CFR 91.169(a)(2) and (c).
Description of Relief Sought/ Disposition: To permit the U.S. Army to file instrument flight rules flight plans in accordance with the regulations prescribed by the U.S. Army.
Grant, April 30, 1998, Exemption No. 6528A.

Docket No.: 27785.
Petitioner: Chevron U.S.A., Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Chevron to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, April 30, 1998, Exemption No. 5948B.

Docket No.: 28206.
Petitioner: Silver Moon Aviation.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate certain aircraft without a TSO–C112 (Mode S) transponder installed.
Grant, April 30, 1998, Exemption No. 6122A.

Docket No.: 28307.
Petitioner: Bombardier Business Aircraft.
Sections of the FAR Affected: 14 CFR 135.337(a)(2), and (3), and (b)(2); and 135.339(b) and (c) and appendix H to part 121.
Description of Relief Sought/ Disposition: To permit certain instructors employed by Bombardier and listed in a part 135 certificate holder's approved training program to act as simulator instructors for that

certificate holder under part 135 without having received ground and flight training in accordance with that certificate holder's training program approved under subpart H of part 135. That exemption also permits simulator instructors employed by Bombardier and listed in a certificate holder's approved training program to serve in advanced simulators without being employed by the certificate holder for 1 year, provided the instructors receive applicable training in accordance with the provisions of this exemption.

Grant, April 30, 1998, Exemption No. 6446A.

Docket No.: 29176.

Petitioner: Col. Marcus F. Cooper, Jr.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought/ Disposition: To permit the petitioner to act as a pilot in operations conducted under part 121 after reaching his 60th birthday.

Denial, April 30, 1998, Exemption No. 6759.

Docket No.: 28499.

Petitioner: Sky Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Sky Helicopters to operate certain aircraft under the provisions of part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft

Grant, April 30, 1998, Exemption No. 6430A.

Docket No.: 26017.

Petitioner: ERA Aviation, Inc.

Sections of the FAR Affected: 14 CFR 43.3(a) and 135.443(b)(3).

Description of Relief Sought/ Disposition: To permit ERA to allow appropriately trained and certificated pilots employer by ERA to install and remove an approved emergency rescue hoist on its Aerospatiale AS332 Super Puma helicopters.

Disposition, Date, Exemption No. 6760.

Docket No.:

Petitioner:

Sections of the FAR Affected: 14 CFR.

Description of Relief Sought/ Disposition: To permit.

Disposition, Date, Exemption No.

[FR Doc. 98–13267 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 98–01–C–00–MHK To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Manhattan Regional Airport, Manhattan, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Manhattan Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 18, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ken Black, Airport Manager, Manhattan Regional Airport, at the following address: City of Manhattan, Kansas, Manhattan Regional Airport, 5500 Fort Riley Blvd., Suite 120, Manhattan Kansas 66502–9721.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manhattan, Manhattan Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invite public comment on the application to impose and use the revenue from a PFC at the Manhattan Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 1, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Manhattan, Kansas, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 31, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June, 1998.

Proposed charge expiration date: January, 2004.

Total estimated PFC revenue: $401,978.

Brief description of proposed project(s): Construction of Access Road (Phase 1); Installation of Part 139 Signage; Construct Terminal Building; Terminal Building Site Development; Construct Service Road; Update the Airport Master Plan; Rehabilitate Apron.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manhattan Regional Airport. Issued in Kansas City, Missouri on May 1, 1998.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 98–13266 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Outagamie County Airport, Appleton, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 18, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District

Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Debra Giuffre, Airport Manager of the Outagamie County Airport at the following address: W6390 Challenger Drive, Suite 201, Appleton, WI 54915.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Outagamie under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612 713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Outagamie County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 16, 1998 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Outagamie was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 18, 1998.

The following is a brief overview of the application.

PFC application number: 98–03–C–00–ATW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1999.

Proposed charge expiration date: April 1, 2004.

Total estimated PFC revenue: $3,909,000,00.

Brief description of proposed projects: Electrical vault expansion, Emergency generator, Airport rescue and firefighting vehicle (ARFF), Access road construction, Runway end blast pads, Taxiway A reconstruction, Acquire snow removal equipment: rotary blower, front end loader with plow, truck with plow, truck with plow dump box and spreader, Construct taxiway J connector.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Outagamie County Airport, W6390 Challenger Drive, Suite 201, Appleton, WI 54915.

Issued in Des Plaines, Illinois on May 12, 1998.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–13265 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3851]

Notice of Receipt of Petition for Decision that Nonconforming 1995 Mercedes-Benz C280 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Mercedes-Benz C280 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Mercedes-Benz C280 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 18, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1995 Mercedes-Benz C280 passenger cars are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1995 Mercedes-Benz C280 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz, A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1995 Mercedes-Benz C280 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1995 Mercedes-Benz C280, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1995 Mercedes-Benz C280 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109

New Pneumatic Tires, 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1995 Mercedes-Benz C280 complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour or its replacement with one already so calibrated.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlights and turn signal lenses; (b) installation of U.S.-model taillight lenses and side markers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock assembly. The petitioner states that the vehicle is already equipped with a warning buzzer microswitch.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* (a) replacement of the rear door lock buttons; (b) modification of the door lock assemblies so that the doors do not open when the locking mechanism is engaged and the door release handle is pulled.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning system through replacement of the driver's seat belt latch and the addition of a seat belt warning buzzer; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicle is equipped with Type II at both front and rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard found in 49 CFR Part 541.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: May 14, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–13250 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3852]

Notice of Receipt of Petition for Decision That Nonconforming 1997 Porsche Boxster Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997 Porsche Boxster passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1997 Porsche Boxster that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 18, 1998.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then

publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1997 Porsche Boxster passenger cars are eligible for importation into the United States. The vehicle which Wallace believes is substantially similar is the 1997 Porsche Boxster that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1997 Porsche Boxster to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1997 Porsche Boxster, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1997 Porsche Boxster is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) replacement of the speedometer/odometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model taillamp assemblies and front sidemarkers. The petitioner states that the vehicle is equipped with conforming headlights, turn signal lenses, and a high mounted stoplamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer in the steering lock assembly. The petitioner states that the vehicle is already equipped with a warning buzzer microswitch.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a safety belt warning system through replacement of the driver's seat belt latch and the addition of a seat belt warning buzzer; (b) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicle is equipped with Type II seat belts at both front designated seating positions. The petitioner notes that the vehicle is a 2-seater.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that bumper shocks and bumper pads must be added to the rear bumper of the non-U.S. certified 1997 Porsche Boxster for it to comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

The petitioner finally states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard found in 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 14, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–13251 Filed 5–18–98; 8:45 am]

BILLING CODE: 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3848; Notice 1]

Beall Trailers of Washington, Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

Beall Trailers of Washington, Inc., of Kent, Washington, (''Beall''), a wholly-owned subsidiary of Beall Corporation, has petitioned for a one-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection.* The basis of the petition is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

Beall manufacturers and sells dump body trailers. It produced a total of 311 trailers in 1997, of which 124 were dump body types. Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including dump body types, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* Beall states that ''alterations may have to be made to the trailer chassis or even raising the dump box to provide space for the retractable guard,'' indicating that a guard that retracts when the dump body is in operation is the solution it is seeking in order to comply. According to Beall's application, the company has ''placed significant resources (time and money)

towards the design of an acceptable guard. We have involved Montana State University professors from their Mechanical Engineering department. We have conducted Finite Element Analysis and traditional methods of design arriving at a plastically deforming guard that meets the standard, for nonasphalt carrying applications.'' The deforming guard does not retract, thus cannot be used on dump body trailers. It believes that its problem is similar to that experienced by other manufacturers manufacturing dump trailers. The company states that ''devices used in other countries do not meet FMVSS 224.'' It continues to study ''hinged/retractable devices'' but must overcome lack of space for a retracted device. It will strive to develop a device that would comply with Federal requirements while an exemption is in effect.

If an exemption is not granted, substantial economic hardship will result. First, it would lose a trailer that accounts for 40 percent of its overall production. In addition, ''some percentage of the remaining 60% would be lost since our customers typically purchase matching truck mounted dump bodies which may also be lost.'' It also believes that 31 of its 63 employees would have to be laid off if its application is denied. Maintenance of full employment would be in the public interest it argues. Beall's net income was $39,317 in 1996 and $72,213 in 1996. In the first 10 months of 1997, its net income before income taxes was $697,040. If the application is denied, it foresees a net loss of $71,445 for 1998.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 8, 1998.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4

Issued on: May 13, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–13276 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Nissan

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Nissan North America, Inc., (Nissan) for an exemption of a high-theft line (whose nameplate is confidential) from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: In a letter dated November 26, 1997, Nissan North America, Inc., (Nissan) requested exemption from the parts-marking requirements of the theft prevention standard for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The letter requested an exemption from parts-marking pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire line.

Nissan's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Nissan requested confidential treatment for the information submitted in support of its petition. In a letter to Nissan dated January 13, 1998, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine-immoblizer system. The antitheft device is activated by turning the ignition switch to the ''OFF'' position using the proper ignition key.

In order to ensure the reliability and durability of the device, Nissan conducted tests based on its own specified standards. Nissan provided a detailed list of the tests conducted. Nissan stated its belief that the device is reliable and durable since the device complied with Nissan's specified requirements for each test.

Nissan compared the device proposed for its vehicle line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Nissan's proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lack an audible or visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR 542.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which Nissan proposes. In these instances, the agency has concluded that the lack of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

On the basis of this comparison, Nissan has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemptions from the parts-marking requirements.

Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the Nissan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide four of the five types of performance listed in 49 CFR 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by

unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided about its antitheft device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Nissan for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, appendix A–I identifies those lines that are exempted from the theft prevention standard for a given model year. Advance listing, including the release of future product nameplates, is necessary in order to notify law enforcement agencies of new models exempted from the parts-marking requirements of the Theft Prevention Standard. Therefore, since Nissan has been granted confidential treatment for the nameplate of its vehicle, the confidential status of the nameplate will be protected until, but no later than, June 1, prior to the model year of its introduction into the marketplace. At that time, Appendix A–I will be revised to reflect the nameplate of Nissan's exempted vehicle line.

If Nissan decides not to use the exemption or this line, it must formally notify the agency, and, thereafter, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an anthitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 12, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–13252 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration Office of Hazardous Materials Safety

Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, Office of Hazardous Materials Safety, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 18, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT:

Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 14, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12063–N	RPSA–1998–3827	The Hydrocarbon Flow Specialist, Inc., Morgan City, LA.	49 CFR 172.102, SP T–18.	To authorize the transportation in commerce of Hydrofluoric Acid solutions, Class 8, in IM 101 tanks equipped with valve to allow for bottom discharge. (Modes 1, 3.)
12064–N	RPSA–1998–3830	Occident Chemical Corp., Webster, TX.	49 CFR 180.509(e)	To authorize the requalification of tank cars using acoustic emission testing. (Mode 2.)
12065–N	RPSA–1998–3831	International Flavors & Fragrances Inc., Hazlet, NJ.	49 CFR 173.120(c)(ii) ...	To authorize the the use of a specially designed device to obtain flashpoint data for fragrance formulas. (Modes 1, 2, 3, 4, 5.)
12066–N	RPSA–1998–3834	KMG Bernuth Inc., Houston, TX.	49 CFR 173.35(b)	To authorize the reuse of flexible IBCs for use in transporting pentachlororphenol, Division 6.1. (Mode 1.0

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12067–N	RPSA–1998–3833	United Parcel Service Co., Louisville, KY.	49 CFR 171.2(a), 173.3(a), 173.301(e), 173.302(a), 173.34(a)(1)&(e).	To authorize the transportation in commerce of compressed gases, n.o.s, Division 2.2 in non-DOT specification cylinders used as part of an aircraft components. (Mode 1.)
12068–N	RPSA–1998–3850	United States Sea Launch GP, L.L.C., Long Beach, CA.	49 CFR 173.56, 173.60	To authorize the shipment of a rocket motor and components which have not been examined and approved as required in specially designed packagings and shipping configurations. (Modes 1, 3, 4.)
12069–N	RPSA–1998–3829	Compagnie Des Containers Reservoirs, Paris, FR.	49 CFR 173.32b(b)	To authorize an alternative visual inspection schedule for certain DOT Specification IM 101 portable tanks used in dedicated service for the transportation in commerce of methlthiopropionic aldehyde (4-thiopentanal), Division 6.1. (Modes 1, 2, 3.)
12072–N	RPSA–1998–3838	Consani Engineering (Pty) Ltd., South Africa.	49 CFR 178.245–1(a) ...	To manufacture, mark and sale DOT Specification 51 ISO tank containers designed in accordance with Section VIII Division 2 of the ASME code for use in transporting Division 2.1, 2.2 and 2.3 material. (Modes 1, 2, 3.)
12073–N	RPSA–1998–3840	Patriotic Fireworks, North East, MD.	49 CFR 173.56(j)	To authorize the transportation in commerce of certain approved Division 1.3G fireworks devices in specially designed packagings to be offered for transportation as Division 1.4G fireworks. (Modes 1, 2.)
12074–N	RPSA–1998–3841	Van Hool NV B–2500 Lier, Koningshooikt, BE.	49 CFR 178–245–1(a) ..	To manufacture, mark and sale DOT Specification steel portable tanks designed, constructed and stamped in accordance with Division 2 of Section VIII of the ASME B&PV Code for use in transporting Division 2.1 and 2.2 material. (Modes 1, 2, 3.)
12076–N	RPSA–1998–3839	The Valvoline Co., Lexington, KY.	49 CFR 172.101	To authorize the transportation in commerce of automotive starting fluids products with alternative shipping name in order to use existing stock. (Mode 1.)

[FR Doc. 98–13253 Filed 5–18–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration, Office of Hazardous Materials Safety

Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, Office of Hazardous Materials Safety, DOT.

ACTION: List of Applications for Modification of Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 3, 1998.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
10672–M	.....	Burlington Packaging, Inc., Brooklyn, NY (See Footnote 1)	10672
11352–M	.....	PepsiCo, Inc., Arlington, TX (See Footnote 2)	11352
11396–M	.....	Laidlaw Environmental Services Inc., Columbia, SC (See Footnote 3)	11396
11624–M	.....	Laidlaw Environmental Services Inc., Columbia, SC (See Footnote 4)	11624
11686–M	.....	Bridgeview, Inc., Morgantown, PA (See Footnote 5)	11686

Application No.	Docket No.	Applicant	Modification of exemption
12055–M	RPSA–1998–3731	M.D. Cryogenics, Inc., Pearland, TX (See Footnote 6)	12055

[1] To modify the exemption to provide for alternative absorbent material and plastic ringlock on specially-designed composite type packaging.
[2] To authorize party-status and additional classes of hazardous materials.
[3] To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting various Class 3 material.
[4] To modify the exemption to provide for cargo vessel as an additional mode of transportation for use in transporting various Class 3 material.
[5] To modify the exemption to provide for several modifications to existing plastic bags.
[6] To reissue the exemption originally issued on an emergency basis to authorize the transportation of portable tanks that are incorrectly marked and are involved in off-shore operations.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53 (e)).

Issued in Washington, DC, on May 13, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 98–13254 Filed 5–18–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–43]

Revocation of Marine Control Surveyors, Inc. Customs Gauger Approval

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Revocation of Customs Gauger Approval.

SUMMARY: Marine Control Surveyors, Inc., of Groves, Texas, a Customs approved gauger, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found not operating in compliance with Customs laws and regulations. Specifically, Marine Control Surveyors, Inc. does not have a valid bond filed with Customs as required under Section 151.13(b)(8) of the Customs Regulations. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval of Marine Control Surveyors, Inc. has been revoked with prejudice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW., Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: May 5, 1998.

George D. Heavey,

Director, Laboratories and Scientific Service.

[FR Doc. 98–13213 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–45]

Revocation of Inert Gas Services, Inc.; Customs Gauger Approval

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Revocation of Customs Gauger Approval.

SUMMARY: Inert Gas Services, Inc., of Pasadena, Texas, a Customs approved gauger, under Section 151.13 of the Customs Regulations (19 CFR 151.13), has requested that the U.S. Customs Service revoke its gauger approval. Accordingly, pursuant to 151.13(f) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval of Inert Gas Services, Inc. has been revoked without prejudice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: May 6, 1998.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 98–13215 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–39]

Revocation of Curtis & Thompkins LTD. Customs Gauger Approval and Laboratory Accreditation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of customs gauger approval and laboratory accreditation.

SUMMARY: Curtis & Thompkins LTD, of Berkeley, California, a Customs approved gauger and accredited laboratory, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found not operating in compliance with Customs laws and regulations. Specifically, Curtis & Thompkins LTD does not have a valid bond filed with Customs as required under Section 151.13(b)(8) of the Customs Regulations. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval and laboratory accreditation of Curtis & Thompkins LTD has been revoked with prejudice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: May 5, 1998.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 98–13234 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–46]

Revocation of 3D Marine, USA Customs Gauger Approval

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of customs gauger approval.

SUMMARY: 3D Marine, USA, of Houston, Texas, a Customs approved gauger, under Section 151.13 of the Customs Regulations (19 CFR 151.13), has requested that the U.S. Customs Service revoke its gauger approval. Accordingly, pursuant to 151.13(f) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval of 3D Marine, USA, has been revoked without prejudice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: May 6, 1998.

George D. Heavey,

Director, Laboratories and Scientific Service.

[FR Doc. 98–13216 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–42]

Revocation of Saybolt-Heinrici, Inc. Customs Gauger Approval and Laboratory Accreditation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of Customs gauger approval and laboratory accreditation.

SUMMARY: Saybolt-Heinrici, Inc. of Pasadena, Texas, a Customs approved gauger and accredited laboratory, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found not operating in compliance with Customs laws and regulations. Specifically, Saybolt-Heinrici, Inc. does not have a valid bond filed with Customs as required under Section 151.13(b)(8) of the Customs Regulations. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs Commercial gauger approval and laboratory accreditation of Saybolt-Heinrici, Inc. has been revoked with prejudice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave. NW., Suite 5.5B, Washington, DC 20229 at (202) 927–1060.

Dated: May 5, 1998.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 98–13222 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–41]

Revocation of Testing Labs, Consultants & Marine Customs Gauger Approval

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Revocation of Customs Gauger Approval.

SUMMARY: Testing Labs, Consultants & Marine, of Covington, Louisiana, a Customs approved gauger, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found not operating in compliance with Customs laws and regulations. Specifically, Testing Labs, Consultants & Marine does not have a valid bond filed with Customs as required under Section 151.13(b)(8) of the Customs Regulations. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval of Testing Labs, Consultants & Marine has been revoked with prejudice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: May 5, 1998.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 98–13230 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–40]

Revocation of Chamberlain & Associates Customs Gauger Approval

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of Customs gauger approval.

SUMMARY: Chamberlain & Associates, of Deer Park, Texas, a customs approved gauger, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found not operating in compliance with Customs laws and regulations. Specifically, Chamberlain & Associates does not have a valid bond filed with Customs as required under Section 151.13(b)(8) of the Customs Regulations. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval of Chamberlain & Associates has been revoked with prejudice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: May 5, 1998.

George D. Heavey,

Director, Laboratories and Scientific Services.

[FR Doc. 98–13233 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–44]

Revocation of Technical & Environmental Services Customs Gauger Approval and Laboratory Accreditation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Revocation of Customs Gauger Approval and Laboratory Accreditation.

SUMMARY: Technical & Environmental Services, of Houston, Texas, a Customs approved gauger and accredited laboratory, under Section 151.13 of the Customs Regulations (19 CFR 151.13), was found not operating in compliance with Customs laws and regulations. Specifically, Technical & Environmental

Services does not have a valid bond filed with Customs as required under Section 151.13(b)(8) of the Customs Regulations. Accordingly, pursuant to 151.13(k) of the Customs Regulations, notice is hereby given that the Customs commercial gauger approval and laboratory accreditation of Technical & Environmental Services has been revoked with prejudice.

EFFECTIVE DATE: April 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Parker, Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Ave., NW, Suite 5.5–B, Washington, DC 20229 at (202) 927–1060.

Dated: May 5, 1998.

George D. Heavey,

Director, Laboratories and Scientific Service.

[FR Doc. 98–13214 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–P

TREASURY DEPARTMENT

Customs Service

[T.D. 98–47]

Bonds; Approval To Use Authorized Facsimile Signatures and Seals

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective this date: Chatham Reinsurance Corporation; Authorized facsimile signature on file for: Christine L. Wolfe, Attorney-in-Fact.

The corporate surety has provided the Customs Service with a copy of the signature to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Dated: May 13, 1998.

Jerry Laderberg,

Chief, Entry Procedures and Carriers Branch.

[FR Doc. 98–13235 Filed 5–18–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–18: OTS Nos. H–2041 and 01402]

FJF Financial, M.H.C., Philadelphia, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on May 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of FJF Financial, M.H.C., Philadelphia, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 13, 1998.

By the Office Thrift Supervision,

Nadine Y. Washington,

Corproate Secretary.

[FR Doc. 98–13208 Filed 5–18–98; 8:45 am]

BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on May 20 in Room 600, 301 4th Street, SW., Washington, DC, from 9:30 a.m. to 10:30 a.m.

At 9:30 a.m. the Commission will meet with Colonel Paul Kappelman, OASD/SO/LIC, Pentagon, and Ms. Carol Doerflein, Director, Office of Strategic Communication, USIA, to discuss crisis management and how planning, liaison, and coordinated efforts can improve the public diplomacy aspects of complex contingencies.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: May 13, 1998.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 98–13241 Filed 5–18–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 96

Tuesday, May 19, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[CC Docket No. 92-297; FCC 98-77]

Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services

Correction

In rule document 98–12667 beginning on page 26502, in the issue of Wednesday, May 13, 1998, make the following correction:

Appearing on page 26502, in the second column, the **EFFECTIVE DATE:** should be corrected to read ''July 13, 1998.''

BILLING CODE 1505-01-D

federal register

Tuesday
May 19, 1998

Part II

Department of Health and Human Services

Centers for Disease Control and Prevention

Human Immunodeficiency Virus (HIV) Prevention Projects and HIV Prevention Community Planning Guidance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99004]

Human Immunodeficiency Virus (HIV) Prevention Projects and HIV Prevention Community Planning Guidance

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Request for comments.

SUMMARY: CDC is preparing to announce the availability of fiscal year 1999 funds to provide support for HIV prevention projects through State and local health departments. This program announcement will assist the Nation's disease prevention efforts by supporting HIV prevention activities and the community planning process to best target resources and activities. CDC invites comments from organizations and individuals on the draft of this announcement which is included. Based on comments received, the final announcement will be published later this year. Also included for comment is the HIV prevention community planning guidance document. This document will be included in the application kit for applicants for HIV prevention funding.

DATES: Submit written comments in response to this notice to: Jessica Gardom, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), Mailstop E–58, 1600 Clifton Road, NE., Atlanta, GA 30333.

Comments must be received on or before June 18, 1998.

SUPPLEMENTARY INFORMATION: The following is a complete text of the draft program announcement for HIV Prevention and HIV Prevention Community Planning Guidance.

Human Immunodeficiency Virus (HIV) Prevention Projects

Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for cooperative agreement programs for Human Immunodeficiency Virus (HIV) Prevention. This program addresses the Healthy People 2000 priority area of HIV Infection. The purpose of this program is to assist public health departments (1) to reduce or prevent the transmission of HIV by reducing or preventing behaviors or practices that place persons at risk for HIV infection; and (2) to reduce associated morbidity and mortality of HIV-infected persons by increasing access to early medical intervention.

Eligible Applicants

Eligible applicants are health departments of States and their bona fide agents that currently receive CDC HIV prevention funds under Program Announcement 804. This includes the 50 States, six cities (Chicago, Houston, Los Angeles, New York, Philadelphia, and San Francisco), the District of Columbia, Puerto Rico, American Samoa, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

Availability of Funds

Approximately $250 million is expected to be available in FY 1999 to fund 65 awards. It is expected that the awards will range from approximately $60,000 to approximately $24,000,000. It is expected that the awards will begin on or about January 1, 1999. Awards will be funded for a 12-month budget period within a project period of 5 years.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Funding estimates may change. Should funds available for this program either increase or decrease significantly during the project period, funding may be awarded competitively.

A. Direct Assistance

You may request Federal personnel, equipment, or supplies as direct assistance, in lieu of a portion of financial assistance.

B. Use of Funds

Funds may not be used to supplant State or local health department funds available for HIV Prevention. Funds may not be used to provide direct medical care (e.g., ongoing medical management, medications, etc.). With documented opportunity for comment by the HIV Community Planning Groups (CPGs), funds awarded for HIV Prevention activities may be used to support HIV/AIDS Surveillance and HIV Sero epidemiology projects. CDC must approve the use of prevention funds for surveillance and the activities supported must directly improve and support HIV prevention activities or the community planning process. The CPG comments on the use of prevention funds may be addressed in the overall letter of concurrence submitted with the application. A separate letter(s) of concurrence must be submitted if the request to use prevention funds for these activities occurs at a later time.

C. Funding Preferences

In 1999, current levels of funding will be maintained for all project areas. Priority will be given to funding activities and interventions identified through the HIV Prevention Community Planning process.

Program Requirements

A comprehensive HIV prevention program includes the following components:

A. A participatory HIV prevention community planning process, in accordance with the guidelines and requirements in the HIV Prevention Community Planning Guidance;

B. Epidemiologic and behavioral HIV/AIDS surveillance, as well as collection of other health and demographic data relevant to HIV risks, incidence, or prevalence;

C. HIV prevention counseling, testing, referral, and partner notification (CTRPN), with strong linkages to medical care, treatment, and other needed services;

D. Health education and risk reduction (HE/RR) activities, including individual-, group-, and community-level interventions;

E. Increasing access to diagnosis and treatment of other STDs;

F. School-based efforts for youth;

G. Public information programs;

H. Quality assurance and training;

I. Laboratory support for HIV prevention;

J. HIV prevention capacity-building activities, including expansion of the public health infrastructure by contracting with non-governmental organizations, especially community-based organizations;

K. An HIV prevention technical assistance assessment and plan;

L. Evaluation of major program activities, interventions, and services.

All of these components except B, E, and F are funded under this announcement. In conducting activities to achieve the purpose of this program announcement, the recipient will be responsible for the activities under A and CDC will be responsible for conducting the activities under B.

A. Required Recipient Activities

1. HIV Prevention Community Planning

All recipients must:

- Develop a comprehensive HIV Prevention Plan for their jurisdictions

through a participatory process as described in the Guidance on HIV Prevention Community Planning (included in application kit).

- Justify discrepancies between the plan and the proposed program activities.

HIV prevention community planning is an ongoing, iterative planning process that is (1) evidence-based (i.e., based on HIV/AIDS and other epidemiologic data, including STD and behavioral surveillance data; qualitative data; ongoing program experience; program evaluation; and a comprehensive needs assessment process) and (2) incorporates the views and perspectives of the groups at risk for HIV infection, as well as providers of HIV prevention services. In HIV prevention community planning, recipients share responsibilities for developing a comprehensive prioritized HIV prevention plan with other State and local agencies, non-governmental organizations, and representatives of communities and groups at risk for HIV infection.

Persons at risk for HIV infection and persons with HIV infection should play a key role in identifying prevention needs not adequately met by existing programs and in planning culturally competent services. Priority setting accomplished through a participatory process will result in programs that are responsive to high priority, community-validated needs within defined populations. Refer to the Guidance on HIV Prevention Community Planning in the application kit.

2. Counseling, Testing, Referral, and Partner Notification (CTRPN)

a. General

All recipients must:

- Provide CTRPN services consistent with the current CDC HIV Counseling, Testing, and Referral Standards and Guidelines.

The major functions of CTRPN programs are to provide individuals a convenient opportunity to: (1) Learn their current HIV sero status; (2) participate in counseling to help initiate and maintain behavior change to avoid infection or, if already infected, to prevent transmission to others; (3) obtain referral to additional prevention, medical care, and other needed services; and (4) provide prevention services and referral for sex and needle-sharing partners of infected persons.

b. Counseling and Testing

All recipients must:

- Routinely offer, on a voluntary basis with informed consent, confidential client-centered HIV prevention counseling and HIV laboratory testing services.
- Provide, unless prohibited by law or regulation, anonymous opportunities for persons to receive client-centered HIV prevention counseling and HIV laboratory testing.
- Implement and maintain a written policy for contacting clients, especially those who are infected with HIV or at high risk of becoming infected, but have not returned to receive their HIV test results and post-test counseling.
- Develop, implement, and maintain a mechanism for assessing the proportion of tested clients who return to receive HIV test results and post-test counseling in both confidential and anonymous testing programs.
- When low return rates (e.g., less than 90% return for sero positives or less than 75% return for sero negatives) are identified, reasons for the low rate must be documented and steps must be taken to correct factors that are contributing to the low rates.

HIV prevention counseling must be client-centered; i.e., tailored to the behaviors, circumstances, and special needs of the person being served. Client-centered counseling is conducted in an interactive manner, responsive to individual client needs. The focus is on developing realistic prevention goals and strategies rather than simply providing information. HIV prevention counseling should be:

- Culturally competent;
- Sensitive to issues of sexual identity;
- Developmentally appropriate; and
- Linguistically specific.

Recipients are encouraged to give priority to providing services in areas with high rates of HIV sero prevalence or AIDS incidence and sites serving clientele known to have high rates of HIV infection or risk behavior.

The availability of anonymous services may encourage some persons at risk for HIV infection to seek services that they would otherwise be reluctant to access. Counseling for clients who test positive in anonymous testing sites should include information about the benefits of receiving follow-up services under a confidential system, information about how to enter such a system, and strong encouragement to access such services.

Some clients who are HIV infected or at high risk of infection may require prevention case management, which includes multiple counseling sessions. Recipients should provide additional prevention counseling to meet the needs of these clients. Funds awarded through the cooperative agreement can be used to support such ongoing counseling and prevention case management in coordination with patient care systems such as the Ryan White funded early intervention services.

If recipients opt to charge for services, they should do so on a sliding scale. No one should be denied services because of an inability to pay. Funds generated from charging clients should be used to support HIV prevention program activities and services.

For additional guidance on the implementation of these services, refer to the attachments.

c. Referral and Linkages With Other Service Providers

All recipients must:

- Develop, implement, and maintain a system to ensure clients who are HIV positive receive appropriate counseling, and are entered and maintained in an appropriate system of care, which includes prevention services.
- Develop, implement, and maintain a mechanism for assessing the proportion of HIV-seropositive persons referred for specific additional services who complete their referrals (i.e., are seen by and receive services from the persons or organizations to which they are referred).

Clients who are at increased risk for HIV infection and clients who are infected with HIV often need many services such as further HIV prevention counseling, evaluation of immune system function, early medical intervention for HIV infection, STD screening and treatment, substance abuse counseling and treatment, tuberculosis testing and treatment, and family planning. These services should be provided at the testing site, if possible.

All clients who are found to be HIV-infected at any CTRPN service site should receive:

- A CD4+ cell test, an initial viral load staging, or the current recommended test to determine stage of illness; and appropriate medical management;
- An assessment of medical eligibility for treatment;
- Counseling about the benefits of early medical treatment opportunities, either on-site or through referral, to receive appropriate medical therapies including STD diagnosis and treatment and TB skin testing;
- Prevention case management;
- Referral for substance abuse treatment, if indicated;
- Referrals for all indicated services;
- Follow-up to ensure that referrals have been successfully accomplished.

If these services are not available at the HIV testing site, individuals must be referred to another service provider.

Information about services available through referral should be regularly updated so that counselors can refer clients for services currently available in the local area. A system that (1) links counseling and testing sites with other health, medical, and psychosocial service providers and (2) provides feedback to the health department on completion of referrals is an essential component of current HIV prevention program standards of care.

Funds provided through this cooperative agreement cannot be used to provide ongoing clinical and therapeutic care of HIV-infected persons. Support for such services should be obtained from other sources of funding, or the services should be obtained through referral to local providers.

d. Partner Notification

All recipients must:

- Establish standards, implement, and maintain procedures for confidential voluntary notification of sex and needle-sharing partners of HIV-infected persons, consistent with the CDC Partner Notification Guidance, to be published.
- Maintain their good faith effort to notify spouses of infected persons as required by law and as certified to CDC.
- Develop, implement, and maintain a mechanism to determine that notification and appropriate follow up of partners has been completed.
- Develop, implement, and maintain a system to assess the partner notification program and improve its function.

In a comprehensive HIV prevention program, partner notification is essential for ensuring that sex and needle-sharing partners of HIV-infected persons are notified about their risk and offered HIV prevention counseling, testing, and referrals. Partner notification is a primary prevention service with the following objectives:

(1) To confidentially inform partners of their possible exposure to HIV;

(2) To provide partners with client-centered prevention counseling that assists and supports them in their efforts to reduce their risks of acquiring HIV or, if infected, of transmitting HIV infection; and

(3) To minimize or delay disease progression by identifying HIV infected partners as early as possible in the course of their HIV infection and assisting them in obtaining appropriate preventive, medical, and other support services.

Partner notification programs should include the following components, ensuring that they are consistent with State and Federal laws:

(1) Client Referral: In client-referral, the HIV-infected person notifies his or her sex or needle-sharing partners of their exposure to HIV. Program staff will provide the client with counseling and support on techniques to confidentially notify and refer their sex or needle-sharing partners to client-centered HIV prevention counseling.

(2) Provider Referral: In provider referral, a health professional who has been specially trained to provide the service notifies the HIV-infected individual's sex or needle-sharing partners of their exposure to HIV. In situations where the HIV-infected person chooses provider referral, program staff will offer assistance in confidentially notifying those partners and offering them counseling, testing, and referral services.

(3) Spousal Notification: The Ryan White CARE Re-authorization Act of 1996, Pub. L. 104–146, Section 8(a), requires that States take administrative or legislative action to require a good faith effort be made to notify a spouse of a known HIV-infected patient that such a spouse may have been exposed to the human immunodeficiency virus and should seek testing. The statute defines a spouse as any individual who is the marriage partner, as defined by State law, of an HIV-infected person, or who has been the marriage partner of that person at any time within the 10-year period prior to the diagnosis of HIV infection. All HIV Prevention Cooperative Agreement recipients must comply with these requirements. Currently, all States and territories have certified to CDC that they will require a good faith effort as required by law.

The partner notification program should be evaluated periodically to do the following:

- Help identify barriers and gaps in service delivery, as well as define the HIV-infected population, so that services can be better directed towards target populations;
- Plan, refine, and target program intervention strategies;
- Analyze and refine resource allocation;
- Provide population-specific feedback to health departments, community-based organization staff, community planning groups, and other community prevention partners; and
- Identify technical assistance needs including training.

All individual data will be maintained at the State and local jurisdiction to assist in developing and monitoring local services. The jurisdiction must adhere to strict protection and confidentiality of client and partner records.

3. Health Education/Risk Reduction (HE/RR)

All recipients must:

- Implement an array of HE/RR activities, and provide resources to minority and other community-based organizations (CBOs) to implement HE/RR activities, in accordance with the priority target populations and interventions identified in their Comprehensive HIV Prevention Plan.
- Ensure interventions are culturally competent, developmentally appropriate, linguistically specific, and sensitive to sexual identity.
- Briefly report to CDC the rationale (e.g., scientific or programmatic basis) for each of the HE/RR interventions implemented.

HE/RR programs and services are efforts to reach persons at increased risk of becoming HIV-infected or, if already infected, of transmitting the virus to others, with the goal of reducing the risk of these events occurring. These programs should be directed to persons whose behaviors or personal circumstances place them at high risk. Examples of high risk groups include men who have or have had sex with men; persons who exchange sex for drugs, money, housing, or food; persons with a newly diagnosed STD; youth who are engaging or are likely to engage in high-risk behavior; women who are sex partners of persons who engage in high-risk behavior; persons in the correctional and criminal justice systems; or homeless persons in high-risk situations.

High priority interventions (as identified by the community planning group) at the individual, group, and community levels should have priority for support with funds awarded through this cooperative agreement. The following are brief descriptions of these programs:

a. Individual Level Interventions include a range of one-on-one client services. Individual prevention counseling assists clients in assessing their own behavior and planning individual behavior change, supports and sustains behavior change, and facilitates linkages to services that support behaviors and practices that prevent the transmission of HIV. Project areas are encouraged to provide, either onsite or through referral, additional prevention counseling, as appropriate to the needs of these clients.

Prevention case management is an individual level intervention directed at persons who need highly individualized support, including substantial

psychosocial, interpersonal skills training, and other support, to remain sero negative or to reduce the risk of HIV transmission to others. HIV prevention case management services are not intended to be substitutes for medical case management or extended social services.

Prevention case management services should complement ongoing HIV prevention services such as HIV antibody counseling, testing, referral, and partner notification and early medical intervention programs. Coordination with HIV counseling and testing clinics, STD clinics, TB testing sites, substance abuse treatment programs, and other health service agencies is essential to successfully recruiting or referring persons at high risk who are appropriate for this type of intervention. See the HIV Prevention Case Management Guidance, September 1997.

b. Group Level Interventions shift the delivery of service from the individual to groups of varying sizes. Group level interventions are intended for persons at increased risk of becoming infected or, if already infected, of transmitting the virus to others. They provide education and support in group settings to promote and reinforce safer behaviors and to provide interpersonal skills training in negotiating and sustaining appropriate behavior change. The content of the group session should be consistent with the format, i.e., groups can meet one time or on an on-going basis. One-time sessions can provide participants an opportunity to hear and learn from one another's experiences, role play with peers, and offer and receive support. Ongoing sessions may offer stronger social influence with potential for developing emergent norms that can support risk reduction. Multiple sessions may be needed for persons at high risk of HIV infection. A group level intervention can include more tailored individual level interventions with some of the group members.

c. Community Level Interventions are directed at changing community norms to increase community support of behaviors known to reduce the risk for HIV infection and transmission. While individual and group level interventions also may be taking place within the community, interventions that target the community are unique in their purpose and are likely to lead to different strategies than other types of interventions. Community level interventions aim to reduce risky behaviors by changing attitudes, norms, and practices through health communications, social (prevention) marketing, community mobilization and organization, and community-wide events.

The primary goals of these programs are to promote healthy behaviors, to change factors that affect the health of community residents, and ultimately, to improve health status. The community may be defined in terms of a neighborhood, region, or some other geographic area, but only as a mechanism to access the social networks that may be located within those boundaries. These networks may be changing and overlapping, but should represent some degree of shared communications, activities, and interests.

Community level interventions are designed to affect social norms or shared beliefs held by members of the community. Specific activities include, for example:

- Identifying and describing (through needs assessments and ongoing feedback from the community) structural, environmental, behavioral, and psycho social facilitators and barriers to risk reduction in order to develop plans to enhance facilitators and minimize or eliminate barriers;
- Persuading community members who are at risk of acquiring or transmitting HIV infection to accept and use HIV prevention measures; and
- Informing community members—regardless of their personal risk level—of their important role in HIV prevention in their communities.

d. Street and community outreach programs are one type delivery method for the interventions described above. They are defined by their locus of activity and by the content of their offerings. These programs reach persons at high risk, individually or in small groups, on the street or in community settings. The programs provide them with prevention messages, information materials, and other services, and assist them in obtaining other HIV prevention services such as HIV-antibody counseling and testing, HIV risk-reduction counseling, STD and TB treatment, substance abuse prevention and treatment, family planning services, tuberculin testing, and HIV medical intervention. Refer to Guidelines for Health Education and Risk Reduction Activities, U.S. Department of Health and Human Services, Public Health Service, April 1995.

4. Public Information (PI) Programs

The purposes of public information programs and activities funded through this cooperative agreement are to build general support for safe behavior, to dispel myths about HIV/AIDS, to address barriers to effective risk reduction programs, and to support efforts for personal risk reduction. In addition to informing general audiences, public information programs should assist in informing persons at risk of infection of how to obtain specific prevention and treatment services, such as CTRPN and STD screening and treatment. Public information programs and messages should be based on an assessment of needs in each State and local area. Messages to communicate through public information programs may include how HIV is and is not transmitted; how to avoid becoming infected; what the impact of other STDs is on the risk of HIV transmission; what to do if you think you might be infected; the benefits of knowing your sero status, including early diagnosis and treatment for HIV disease; and how to talk to your children, friends, and neighbors about HIV prevention.

Give priority to materials directed to hard-to-reach audiences and populations heavily affected by the HIV epidemic. Submit any newly developed public information resources and materials to the National AIDS Information Clearinghouse so that they can be incorporated into the current database for access by other organizations and agencies.

5. Quality Assurance and Staff Training

All recipients must:

- Develop and implement a mechanism for assessing the performance and training needs of staff providing HIV prevention services, especially those staff providing HIV prevention counseling and partner notification. Staff training should be guided by the assessment.
- Develop comprehensive written quality assurance procedures and staff performance standards and make them available to all program staff. Management should ensure these policies and procedures are followed.
- Develop and implement a quality assurance system for all counseling and testing providers, with special attention to assuring that seropositive clients learn their test results.
- Develop and implement a mechanism for assessing the proportion of HIV-seropositive persons referred for additional services who complete their referrals. Review data and improve process as necessary.
- Develop and implement a mechanism to determine that notification and follow up of partners has been completed. Review data and improve process as necessary.
- Develop and implement a mechanism to assure HE/RR activities

are culturally competent, developmentally appropriate, linguistically specific, and sensitive to sexual identity.

• Develop and maintain a mechanism to ensure the consistency, accuracy, and relevance of information provided to the public through local hotlines including information about referral services.

Quality assurance is essential to make certain that delivery of quality HIV prevention services is consistent and to ensure interventions are delivered in accordance with established standards. Quality assurance programs include measures to maintain high performance expectations of staff and that appropriate, competent, and sensitive methods are used for counseling, referral of clients, and providing other risk reduction messages. These quality assurance procedures and staff training should extend to the organizations providing HIV prevention activities through contracts.

Quality assurance and staff training is an ongoing process. An important component of this process is routine, periodic observation during counseling sessions and subsequent feedback to reinforce specific strengths noted and address any deficiencies detected. Performance standards that define expectations for the context and delivery of the counseling massages should be developed.

Feedback from client satisfaction surveys should be used routinely as a factor in assessing the services provided.

6. HIV Prevention Capacity-Building Activities

Recipients must:

• Develop, implement, and maintain a plan to provide financial assistance to CBOs and other HIV prevention providers that includes provisions for ensuring that funds are awarded on a timely basis.

• Issue Requests for Proposals (RFPs) within 90 days of the receipt of the notice of grant award. Multi-year assistance is allowable, provided the initial award was made competitively.

In order to build capacity, health departments should provide financial and technical assistance to strengthen their own infrastructure and that of non-governmental organizations to deliver effective HIV prevention interventions. Some examples of capacity building activities are implementing systems to ensure quality and integration of services (particularly HIV, STD, TB, and drug treatment), strengthening laboratory capacity, improving community needs assessments, funding community-based organizations to provide services, and providing technical assistance in all aspects of program planning and operations.

7. HIV Prevention Technical Assistance Assessment and Plan

Recipients must:

• Assess their own needs, as well as the needs of community-based organizations in their jurisdiction, for technical assistance in the areas of HIV prevention program planning, implementation, and evaluation.

• Develop, implement, and maintain a plan to provide the technical assistance indicated by the assessment.

Recipients should identify their own current and projected technical assistance needs and the needs of the jurisdiction's community-based providers, for program planning, implementation, and evaluation. Recipients should develop and implement a plan to provide ongoing technical assistance for HIV prevention and early medical intervention services in their communities, as indicated by the assessment. These should include planning, implementing, and evaluating prevention programs, activities, and services. Technical assistance should include the active monitoring of services and programs provided by CBOs.

Program management, strategies for meeting the HIV prevention needs of populations at high risk, and strategies for overcoming barriers to prevention should be priority areas for technical assistance programs.

8. Evaluation of Major Program Activities, Interventions, and Services

Evaluation is essential to monitor progress, measure program success, and strengthen programs and program activities. To this end, recipients need to conduct evaluation activities that will assess their progress in HIV prevention efforts and will contribute to the planning, implementation, and evaluation of effective HIV prevention programs.

The evaluation activities described here are listed as six phases. It is expected that there will be a range in recipient capacity and resources to conduct evaluations and that some recipients will have already conducted some of the phases. Therefore, although the phases are listed in an idealized sequence, recipients should implement the phases in a manner that reflects their current evaluation achievements, capacity, activities, resources, and needs. Each year, in their annual CDC funding applications, recipients should submit progress reports and data pertaining to the phases they implemented during the previous year and establish objectives for the upcoming year. As grantees implement new phases of evaluation, those phases that were previously initiated should be continued.

CDC is creating a *CDC Evaluation Guidance* that will be disseminated to recipients. The guidance is designed to assist recipients in preparing their application and implementing evaluation activities described in this announcement. To this end, the guidance provides an overview of CDC's evaluation model, upon which this announcement is based; describes recipient evaluation activities and data collection for each phase; lists references for technical assistance and training to build recipient capacity to implement these activities; and contains definitions of key terms.

All recipients should include the following evaluation activities in their programs:

a. Phase I: Development of a Comprehensive Evaluation Plan

Recipients should develop a comprehensive plan for evaluation of health department and health department-funded HIV program services and interventions. The plan should describe what will be done each year over the next five years. Phases II through IV describe the five types of evaluation in which grantees should engage. The plan should be clear, specific, and realistic.

b. Phase II: Evaluation of HIV Prevention Community Planning

Recipients should track and keep records on an ongoing basis in the following areas pertaining to the community planning process and development and implementation of the Comprehensive HIV Prevention Plan, using the Evaluation Guidance tools.

(1) Recruitment of community planning group members and representation of affected communities and areas of expertise on the community planning group (Community Planning Core Objectives 1 and 2).

(2) Application of a needs assessment and an epidemiologic profile to determine target groups and HIV prevention strategies (Community Planning Core Objective 3).

(3) Application of scientific knowledge in the selection and formulation of intervention strategies (Community Planning Core Objective 4).

(4) Developing goals and measurable objectives for the planning process and monitoring progress on the objectives.

(5) Assessing the cost of the process.

(6) Assessing the extent to which resources allocated by the health department match the epidemiologic profile.

(7) Assessment of the extent to which the final version of the Comprehensive HIV Prevention Plan is used in the recipient health department's budget decisions and in the health department's planning and development of HIV prevention program activities (Community Planning Core Objective 5).

c. Phase III: Program Design Evaluation

Prior to launching new program activities, recipients should assess the quality of program activity designs to ensure that the proposed interventions are scientifically sound, the implementation system is well organized, and stated goals are clear and feasible. (Factors to be evaluated are discussed in the section on Evaluation Reporting Format.)

d. Phase IV: Process Evaluation of HIV Prevention Programs

Conduct process evaluation through:

- Ongoing data collection and monitoring regarding the implementation of health department and health department-funded program activities.
- Assessment of the congruency between the intended and actual implementation of health department and health department-funded program activities.
- Use evaluation findings in order to improve program activities as indicated by the data.

e. Phase V: Outcome Evaluation

Outcome evaluation for this announcement is defined as the assessment of the effects of an intervention on the individuals who were targeted in the intervention. For example, changes in knowledge, attitudes, or behavior are usually outcome variables.

Recipients whose award is more than $1 million are expected to carry out at least one outcome evaluation during the five-year period. Outcome evaluation may be most easily achieved for the following types of interventions: HIV counseling and testing, referral, individual-level counseling, group-level counseling, and institution-based programs. *CDC Evaluation Guidance* (to be published) will describe recommended outcome evaluation designs and emphasize those designs that are cost-efficient and practically feasible to implement.

f. Phase VI: Impact Evaluation

Impact evaluation is the assessment of the effects beyond the outcome. For example, assessment of the cumulative effect of all HIV prevention activities in the jurisdiction is an impact evaluation.

CDC plans to conduct national impact evaluation studies using HIV/AIDS surveillance and other public health data sets. Recipients are not required to perform their own impact evaluation (but may do so if they wish and resources permit); however, recipients must participate in CDC's HIV prevention effectiveness indicators project.

9. Other Activities

Recipients must:

a. Have the capability to access the Internet and to download documents about HIV from CDC and other sites.

b. Ensure participation of appropriate representatives (governmental and non-governmental) in national or regional planning and implementation meetings.

Recipients should budget funds provided through this cooperative for these efforts. For example, travel funds should be available for community planning co-chairs to travel to the HIV Co-chairs meeting.

B. CDC Activities

1. Provide consultation and technical assistance in all aspects of the comprehensive HIV prevention program, including the community planning process, and planning, conducting, and evaluating HIV prevention and intervention activities.

2. Provide up-to-date information including diffusion of best-practices in all areas of the diagnosis, treatment, surveillance, and prevention of HIV.

3. Provide assistance to improve systems that monitor disease and reporting trends.

4. In consultation with recipients, assess training needs and determine how best to meet those needs. For HIV Prevention, CDC, in concert with State and local health departments, will provide training, either directly or through its network of STD/HIV prevention training centers, for persons who supervise, manage, and perform partner notification and other outreach activities and for staff who provide direct patient care.

5. Facilitate the adoption and adaptation of effective prevention intervention models among project areas through workshops, conferences, written communications.

6. Assist recipients in evaluating their program performance, in meeting their objectives, and in complying with cooperative agreement requirements.

7. Coordinate multi State approaches to HIV prevention and intervention.

8. Support individual project areas by providing technical assistance in the development of new or innovative models for behavioral and clinical interventions and the evaluation of them.

Application Content

A. General

Develop applications in accordance with CDC 0.1246E, information contained in the program announcement, and the instructions and format provided below.

Sequentially number all pages in the application and attachments, include a table of contents reflecting major categories and corresponding page numbers. Submit the original and each copy of the application unstapled and unbound. Provide only those attachments directly relevant to this application. All materials must be single spaced, printed in 12 CPI font, unreduced, on 8½″ by 11″ paper, with at least 1″ margins, and printed on one side only.

B. Cross-Program Activities

Submit a brief statement addressing major HIV, STD, and TB cross-program issues. In this statement summarize progress made in the last 12 months and the current level of shared activities across HIV, STD, and TB programs. Discuss plans to improve coordination across HIV, STD, and TB programs over the next 12 months, including plans to increase collaboration in surveillance and any other efforts to improve program coordination.

C. HIV Prevention Community Planning (Not To Exceed 20 Pages)

1. National Community Planning: Progress Report and 1999 Objectives

Provide a brief summary of progress in accomplishing the following national community planning core objectives. Also, please summarize steps that will be taken over the next 12 months to accomplish the national core objectives.

a. Fostering the openness and participatory nature of the community planning process.

(1) Describe any efforts in the past 12 months in recruiting, training, and supporting community planning group members, and methods used to obtain input from outside group membership. Briefly profile the number of HIV prevention community planning groups convened in the jurisdiction. If the jurisdiction convenes other county or regional groups that provide input to a community planning group, please

describe this structure. Briefly describe any changes in the planning structure of your jurisdiction. Also briefly describe any mechanisms used during the past 12 months for coordination with other planning activities, e.g., Ryan White Title I and II, STD, TB.

(2) Describe any new or additional steps to be taken in each of these areas in the next 12 months to foster the openness and participatory nature of the community planning process.

b. Ensuring that the community planning groups reflect the diversity of the epidemic in your jurisdiction, and that expertise in epidemiology, behavioral science, health planning and evaluation are included in the process.

(1) Summarize the characteristics and expertise represented by members of the community planning groups over the past 12 months. Discuss any gaps in representation and approaches that have been used during the past 12 months to address the gaps. Briefly describe any methods used to obtain input from outside group membership. Do not include any information that might link HIV status to any individual.

(2) Please describe planned activities for the next 12 months including plans for addressing any gaps in representation.

c. Ensuring that priority HIV prevention needs are determined based on an epidemiologic profile and a needs assessment.

(1) Briefly describe the process that was used or steps that were taken over the past 12 months to develop or modify the epidemiologic profile and the needs assessment. Briefly describe how priority populations were identified from the epidemiologic profile and needs assessment.

(2) Describe plans for updating or modifying the Epi profile and needs assessment over the next 12 months.

d. Ensuring that interventions are prioritized based on explicit consideration of priority needs, outcome effectiveness, cost effectiveness, social and behavioral science theory, and community norms and values.

(1) Briefly describe the process that was used to prioritize interventions over the past 12 months.

(2) Describe any changes planned in the prioritization process in the next 12 months.

e. Fostering strong, logical linkages between the community planning process, plans, application for funding and HIV prevention resources.

(1) Briefly describe the linkage between this application for funding and allocation of CDC HIV prevention resources and the HIV Prevention Plan.

(2) Describe any changes planned in the next 12 months.

(3) Describe linkages between planned expenditures (as reported in the budget tables), epidemiological statistics, and plans for addressing any gaps between budget levels and epidemiologic statistics.

2. Community Planning Technical Assistance and Evaluation

a. Technical Assistance

(1) Briefly describe any technical assistance provided to the community planning group in the past 12 months.

(2) Describe areas of needed technical assistance and planned methods for obtaining this assistance in the next 12 months.

b. Evaluation

(1) Briefly describe how the community planning process was evaluated over the past 12 months and the major conclusions of the evaluation.

(2) Describe plans to evaluate the community planning process over the next 12 months.

3. Comprehensive HIV Prevention Community Plan

Please provide as an attachment, the current version of your Comprehensive HIV Prevention Plan. For areas without a jurisdiction-wide planning group, include regional plans and a jurisdiction-wide summary of recommendations and conclusions. If the jurisdiction has developed a separate document that updates and describes refinements or changes to the original Comprehensive HIV Prevention Plan, please attach both the original Plan and the supplementary document that updates the Plan. Include the proposed activities for 1999, letters of concurrence/non-concurrence from each community planning group in the jurisdiction, a line item budget and narrative justification, and relevant attachments. (The Comprehensive Plan or the jurisdiction-wide summary are attachments to the application and are not included in the page limit for this section.)

a. Priority populations and interventions. List the populations identified in the HIV Prevention Community Plan in rank order. For each of these populations list the recommended interventions (e.g., CTRPN, HE/RR) in rank order. For each intervention, list goals recommended in the plan. Please use the following format:

Population #1
Intervention #1
Goals
Intervention #2
Goals
Population #2

D. HIV Prevention Program (Not to Exceed 30 Pages)

1. Progress Report for 1998

Summarize progress during the past year in achieving objectives related to each of the programmatic activities listed below. For each activity, describe progress toward achieving program objectives, related training and quality assurance activities, program evaluation findings, changes or adjustments resulting from evaluation findings, and reasons for not attaining an objective.

a. HIV CTRPN;
b. HE/RR (including individual level interventions, group level interventions, community level interventions, and street and community outreach);
c. Public Information Programs;
d. Evaluation Activities;
e. HIV prevention capacity building activities;
f. Quality assurance and training;
g. Other activities.

2. Budget Tables

Complete the Table of Estimated Expenditures for 1998 HIV Prevention funding, indicating 1998 HIV prevention allocations by intervention, population, and race/ethnicity. This is used to report to Congress and Office of Management and Budget on use of tax dollars, targeted programs, and to justify need for additional support.

3. Program Goals, Objectives, and Activities

a. 5-Year Programmatic Goals

Based on the past 5 years' activities, provide overall programmatic goals for the next five-year period. These are intended to provide a general framework-objectives and activities will be developed annually, when each of the next budget period program applications are written.

b. 1999 Priority Populations and Interventions

List the priority populations identified by the recipient in rank order. For each of these populations, list the interventions the grantee plans to fund in rank order. For each intervention list the goals. For each goal, state realistic, specific, time-phased, and measurable objectives to be achieved during the next 12 months. Outline strategies and activities to be undertaken and services to be provided to achieve objectives. Include, as needed, training, quality assurance, and capacity-building objectives related to each intervention. Please use the following format:

Population #1
Intervention #1
Goals
Objectives
Activities
Intervention #2
Goals
Objectives
Activities
Population #2
Intervention #1

c. Linkages Between Primary and Secondary HIV Prevention Activities

Briefly describe the linkages that will be developed and maintained between primary and secondary prevention services in the jurisdiction. Provide goals and realistic, specific, time phased, and measurable objectives for the next 12 months. Outline strategies and activities to be undertaken to achieve these objectives.

d. Linkages With Other HIV Prevention Related Activities

Briefly describe the program's proposed linkages with other HIV prevention-related activities (e.g., epidemiologic and behavioral surveillance; research; substance abuse, STD, and family planning programs; and program evaluation activities) and the prevention program strategies proposed in this application. Provide goals and realistic, specific, time phased, and measurable objectives for the next 12 months. Outline strategies and activities to be undertaken to achieve these objectives.

e. Coordination of HIV Prevention Services and Programs

Briefly describe the program's plans for coordination among public and non-governmental agencies to provide HIV prevention services and programs. Provide goals and realistic, specific, time phased, and measurable objectives for the next 12 months. Outline strategies and activities to be undertaken to achieve these objectives.

f. Technical Assistance

Briefly describe your need, as well as the needs of the community-based organizations in your jurisdiction, for technical assistance in the areas of HIV prevention program design, implementation, and evaluation. Describe plans for addressing these technical assistance needs. Provide goals and realistic, specific, time phased, and measurable objectives for the next 12 months. Outline strategies and activities to be undertaken to achieve these objectives.

g. Program Evaluation

Each year, in their annual CDC funding applications, recipients should submit progress reports and data pertaining to the phases they implemented during the previous year and establish objectives for the upcoming year. As grantees implement new phases of evaluation, those phases that were previously initiated should be continued.

4. Explain Any Differences Between the Priority Populations, Interventions, and the Proposed Program Activities and Those Recommended in the Comprehensive HIV Prevention Plan (e.g., other funding sources are supporting an activity, other providers are meeting a need, public health interest, legal constraints)

E. Concurrence of HIV Prevention Community Planning Groups

Recipients must submit letters of concurrence or non-concurrence from each HIV prevention community planning group convened within the jurisdiction. The letters should indicate the extent to which the recipient and the HIV prevention community planning groups have successfully collaborated in developing the comprehensive HIV prevention plan and have reviewed and agree upon the program priorities contained in this application. The letter should describe the process used to obtain concurrence, including a description of the process used for review of the application by the community planning group, the time frame allotted for the review, who from the community planning group reviewed it (co-chairs, members, subcommittee chairs), and the quality of the concurrence (e.g., without reservation, with minor concerns, with important concerns). At a minimum, the letters should be signed by the co-chairs on behalf of the groups. There should be letters from each of the community planning groups described above. If a letter of concurrence includes reservations or a statement of concern/issues, address those concerns in the application. Letters of non-concurrence must cite specific reasons for the non-concurrence. In situations where the community planning group does not concur with the program priorities identified in the funding application and the recipient is proposing to implement activities or allocate Federal resources based on other priorities, a justification must be provided by the recipient as to why the priorities identified through the community planning process are not being implemented.

Instances of planning group concerns or non-concurrence will be evaluated on a case-by-case basis. After consultation, CDC will determine what action, if any, may be appropriate.

F. Budget Information

In accordance with Form CDC 0.1246E, provide a line item budget and narrative justification for all requested costs that are consistent with the purpose, objectives, and proposed program activities. Within this budget, please provide the documentation requested for each cost category:

1. Line item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.

2. Line item breakdown and justification for all contracts, including: (1) Name of contractor, (2) period of performance, (3) method of selection (e.g., competitive or sole source), (4) description of activities, (5) target population and (6) itemized budget.

3. Requests for any new Direct Assistance Federal assignees, include:

a. The number of assignees requested;

b. A description of the position and proposed duties;

c. The ability or inability to hire locally with financial assistance;

d. Justification for request;

e. An organizational chart and the name of the intended supervisor;

f. The availability of career-enhancing training, education, and work experience opportunities for the assignee(s) and;

g. Assignee access to computer equipment for electronic communication with CDC.

4. Complete CDC budget tables. Note: Following receipt of your 1999 award, additional budgetary information may be requested.

Submission and Deadline

(To be provided with final version)

Evaluation Criteria

A. All applications will be reviewed by CDC program consultants for determination of progress toward stated objectives and for compliance with program guidance. In addition, each application will also receive an external review by an independent team of governmental and non-governmental representatives to determine technical acceptability. The purposes of this external review will be to evaluate each application individually against to the following criteria:

1. The need for support as documented in the Epidemiologic Profile and Needs Assessment including

(1) the degree to which trends in reported AIDS cases and HIV sero prevalence show the need for increased HIV prevention activities and services, and (2) the extent of unmet prevention needs as identified through the needs assessment in the Comprehensive HIV Prevention Plan.

2. Determine progress and continued compliance with the Community Planning Guidance and this document.

3. The extent to which the short-term and long-term objectives are realistic, measurable, time-phased, and related to the project's Comprehensive HIV Prevention Plan.

4. The quality of the recipient's plan for conducting program activities, the potential effectiveness of the proposed methods in meeting the stated objectives, and previous success in implementing activities and services. This includes the degree to which the proposed program activities and methods are science-based (i.e., theory-predicted or based on findings of scientific research) and the likelihood that the recipient can effectively implement the proposed activities and services.

5. The quality of the proposed evaluation plan.

6. The extent to which the budget request is clearly explained, is adequately justified, and is consistent with the intended use of Federal funds.

7. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities) and recognition of mutual benefits.

B. In addition, the external review will:

1. Recommend specific actions for CDC to ensure that project areas are developing, implementing, and refining technically acceptable prevention plans.

2. Recommend technical assistance or other support to further a project area's progress in implementing community planning.

3. Identify innovative or promising practices in HIV prevention and community planning and recognize successes.

4. Determine national progress in implementing HIV prevention community planning and potential technical assistance needs in 1999.

Other Requirements

A. Technical Reporting Requirements

A report describing progress in HIV prevention community planning and HIV prevention program activities is required annually with the application for funding.

An original and two copies of a financial status report (FSR) are required no later than 90 days after the end of each budget period and a final report after the project period. Submit the all reports to the Grants Management Branch, CDC.

Statistical reports of HIV-antibody counseling and testing activities (OMB [Office of Management and Budget] Approval No. 0920–0280) are required 45 days after the end of each quarter. Project areas are required to collect and report data for each episode of counseling or testing funded by CDC on all of the following variables: Project area, site type, site number, date of visit, sex, race/ethnicity, age, reason for visit, risk for HIV infection, whether test is anonymous or confidential, whether client accepted testing, results of test, whether post-test counseling occurred, date of post-test counseling and state, county, and zip code of client residence. Data should be collected in a manner consistent with and not in place of client-centered counseling. Project areas may collect other information to meet local data and evaluation needs. Project areas may use CDC scan form for reporting or a local form with data reported electronically. Project areas are encouraged to report data at client record level. Project areas may request technical assistance to achieve this.

For other requirements, see the following attachments.

B. AR98–1 Human Subjects Requirements

C. AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

D. AR98–4 HIV/AIDS Confidentiality Provisions

E. AR98–5 HIV Program Review Panel Requirements

F. AR98–6 Patient Care

G. AR98–7 Executive Order 12372 Review

H. AR98–8 Public Health System Reporting Requirements

I. AR98–9 Paperwork Reduction Act Requirements

J. AR98–10 Smoke-Free Workplace Requirements

K. AR98–11 Healthy People 2000

L. AR98–12 Lobbying Restrictions

Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 317, 301, and 311 of the Public Health Service Act (42 U.S.C. 241(a) and 247(b)), (42 U.S.C. 241) and (42 U.S.C. 243), as amended. The Catalog of Federal Domestic Assistance (CFDA) number for this project is 93.940.

Where To Obtain Additional Information

Please refer to Program Announcement 99004 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number 99004, Centers for Disease Control and Prevention (CDC), Room 300, Mailstop E–15, 255 East Paces Ferry Road, NE., Atlanta, GA 30305–2209; Telephone (404) 842–6550; Email address KGM1@CDC.GOV; See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact your project officer or Jessica Gardom, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), Mailstop E–58, 1600 Clifton Road, NE., Atlanta, GA 30333; Telephone (404) 639–5248; Email address JCG3@CDC.GOV.

Dated: May 13, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Guidance: HIV Prevention Community Planning for HIV Prevention Cooperative Agreement Recipients

Essential Components of a Comprehensive HIV Prevention Program

To implement a comprehensive HIV prevention program, State, local, and territorial health departments that receive HIV Prevention Cooperative Agreement funds should assure that efforts in their jurisdictions include all of the following essential components:

1. A community planning process, known as HIV prevention community planning, in accordance with this guidance;
2. Epidemiologic and behavioral surveillance, as well as compilation of other health and demographic data relevant to HIV risks, incidence, or prevalence;
3. HIV counseling, testing, referral, and partner notification (CTRPN) with strong linkages to medical care, treatment, and other needed services;
4. Health education and risk reduction (HE/RR) activities, including individual-, group-, and community-level interventions;
5. Accessible diagnosis and treatment of other sexually transmitted diseases;
6. Accessible diagnosis and treatment of tuberculosis and other opportunistic infections;
7. School-based efforts for youth;
8. Public information programs;
9. Training and quality assurance;
10. Laboratory support;
11. HIV prevention capacity-building activities, including expansion of the public health infrastructure by contracting with non-governmental organizations, especially community-based organizations;
12. An HIV prevention technical assistance assessment and plan; and
13. Evaluation of major program activities, interventions, and services.

This guidance addresses the first of these components, HIV prevention community planning, and outlines the minimum standards that CDC requires of its health departments in the implementation of the community planning process. Definitions and programmatic standards and guidelines referenced in this guidance are further described in the materials included with the 1999 HIV prevention cooperative agreement program announcement number 99004.

Financial Support of HIV Prevention Community Planning

HIV prevention cooperative agreement funds should be used to support all aspects of the community planning process, including:

1. Supporting planning group meetings, public meetings, and other means for obtaining community input;
2. Facilitating involvement of all community planning group members in the planning process, particularly those persons with and at risk for HIV infection;
3. Supporting capacity development for inclusion,* representation** and parity*** of community representatives and other planning groups members to participate effectively in the process;
4. Providing technical assistance to health departments and community planning groups;
5. Supporting infrastructure for the HIV prevention community planning process;
6. Collecting, analyzing, and disseminating relevant data; and
7. Evaluating the community planning process.

Goal of HIV Prevention Community Planning

The goal of HIV prevention community planning is to improve the effectiveness of State, local, and Territorial health departments' HIV prevention programs by strengthening the scientific basis, relevance, and focus of prevention interventions. CDC monitors progress in meeting this goal through the following five core objectives:

Core Objectives:

1. Fostering the openness and participatory nature of the community planning process.
2. Ensuring that the community planning group(s) reflects the diversity of the epidemic in the jurisdiction, and that expertise in epidemiology, behavioral science, health planning, and evaluation are included in the process.
3. Ensuring that priority HIV prevention needs are determined based on an epidemiologic profile and a needs assessment.
4. Ensuring that interventions are prioritized based on explicit consideration of priority needs, outcome effectiveness, cost and cost effectiveness, theory, and community norms and values.
5. Fostering strong, logical linkages between the community planning process, application for funding, and allocation of CDC HIV prevention resources.

Definition of HIV Prevention Community Planning

HIV prevention community planning is an ongoing, iterative planning process that is (1) evidence-based (i.e., based on HIV/AIDS and other epidemiologic data, including STD and behavioral surveillance data; qualitative data; ongoing program experience; program evaluation; and a comprehensive needs assessment process) and (2) incorporates the views and perspectives of groups at risk for HIV infection for whom the programs are intended, as well as providers of HIV prevention and STD treatment services. Together, representatives of affected populations, epidemiologists, behavioral scientists, HIV/AIDS prevention service providers, STD treatment providers, health department staff, and others analyze the course of the epidemic in their jurisdiction, assess HIV prevention needs, determine their priority prevention needs, identify HIV prevention interventions to meet those needs, and develop comprehensive HIV prevention plans that are directly responsive to the epidemics in their jurisdictions. These comprehensive HIV prevention plans address all the essential components of a comprehensive HIV prevention program described in the section Essential Components of a Comprehensive HIV Prevention Program, or explain why a particular component is missing.

Prioritizing HIV prevention needs is a critical part of program planning. Community planning group members are expected to follow a logical, evidence-based process in order to determine the highest priority prevention needs in their jurisdiction. These prioritized prevention needs are particularly important to the health department in allocating prevention

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* Inclusion, representation, and parity are fundamental tenets of HIV prevention community planning. Inclusion is defined as the assurance that the views, perspectives, and needs of all affected communities are included and involved in a meaningful manner in the community planning process. This is the assurance that the community planning process is inclusive of all the needed perspectives.

** Representation, is the assurance that those who are representing a specific community truly reflect that community's values, norms, and behaviors. This is the assurance that those representatives who are included in the process are truly able to represent their community. At the same time, these representatives should be able to participate as group members in objectively weighing the priority prevention needs of the jurisdiction.

*** Parity, is the condition whereby all members of the HIV prevention community planning group have the skills and knowledge for input and participation, as well as equal voice in voting and other decision-making activities. This is ensuring that those representatives who are included in the process can participate equally in the decision-making process.

dollars. Specific high priority HIV prevention needs (both populations and interventions) identified in the comprehensive HIV prevention plan are then operationalized in the health department's application to CDC for Federal HIV prevention funds. There should be strong, logical linkages between the community planning process, the comprehensive HIV prevention plans, the health department's application for Federal funds, and the allocation of Federal HIV prevention resources by the health department.

To meet this definition, community planning groups must focus primarily on the tasks of planning. Once a comprehensive plan has been developed, the community planning group should periodically review it to determine whether or not it is necessary to:

1. Seek additional information to clarify and focus prevention priorities;
2. Define potential methods for obtaining needed additional information;
3. Give additional attention to strengthening specific recommendations in the plan, such as
a. The linkages between primary prevention activities and secondary prevention, STD treatment, drug treatment, and medical services;
b. Development of an in-depth plan for coordination of health department HIV prevention activities with the prevention activities of other governmental and non-governmental agencies in the jurisdiction;
c. Conducting an assessment of technical assistance needs in the jurisdiction and developing a plan for meeting the needs;
4. Review program implementation information that would inform the planning process and potentially affect the priorities in the plan, e.g., progress reports from contractors, process evaluation data from other program activities;
5. Monitor any shifts in incidence;
6. Conduct new or additional needs assessment, resource inventories, focus groups, etc.;
7. Review new research findings on intervention effectiveness and determine the impact, if any, on the plan; and
8. Consider how new biomedical or prevention technologies might best be utilized.

These reviews may result in additional objectives for the community planning group in the upcoming year and an updated or revised comprehensive plan. Community planning groups may choose to take a long-term approach to their planning process, in one year reviewing the plan and developing action steps to strengthen it; in the next, focusing on implementing the steps and revising the plan; in the next, focusing on a particular population for which more information is needed; in the third, returning to the basic community planning steps. The planning process should be flexible, taking a long-term approach and negotiating meaningful tasks for the planning group that contribute and enhance the comprehensive plan. The important, overall goal of HIV prevention community planning is to have in place a comprehensive HIV prevention plan that is current, evidence based, adaptable as new information becomes available, tailored to the specific needs of each jurisdiction, and widely distributed in an effort to provide a road map for prevention that can be used by all prevention providers in the jurisdiction.

Principles of HIV Prevention Community Planning

The following principles trace their origins to several sources: HIV prevention program assessments conducted by CDC staff; CDC's Planned Approach to Community Health (PATCH) program; CDC's Assessment Protocol for Excellence in Public Health (APEX/PH) project; the ASTHO/NASTAD/CSTE State Health Agency Vision for HIV Prevention; the June 1994 External Review of CDC's HIV Prevention Strategies by the CDC Advisory Committee on the Prevention of HIV Infection; experience and recommendations of health departments and non-governmental organizations; the health promotion, community development, behavioral and social sciences literature; and CDC and its partners' experience in implementing community planning since 1994.

All Grantees Are Required To Adhere to the Following Principles

1. HIV prevention community planning reflects an open, candid, and participatory process, in which differences in cultural and ethnic background, perspective, and experience are essential and valued.
2. HIV prevention community planning is characterized by shared priority setting between health departments administering and awarding HIV prevention funds and the communities for whom the prevention services are intended.
3. Priority setting accomplished through a community planning process produces programs that are responsive to high priority, community-validated needs within defined populations. Persons at risk for HIV infection and persons with HIV infection play a key role in identifying prevention needs not adequately met by existing programs and in planning for needed services that are culturally appropriate. HIV prevention programs developed with input from affected communities are likely to be successful in garnering the necessary public support for effective implementation and in preventing the transmission of HIV infection.
4. Representation on a community planning group includes:
a. Persons who reflect the characteristics of the current and projected epidemic in that jurisdiction (as documented by the epidemiologic profile) in terms of age, gender, race/ethnicity, socioeconomic status, geographic and metropolitan statistical area (MSA)-size distribution (urban and rural residence), and risk for HIV infection. In addition to reflecting the characteristics outlined above, these representatives should articulate for, and have expertise in understanding and addressing, the specific HIV prevention needs of the populations they represent. At the same time, these representatives should be able to participate as group members in objectively weighing the priority prevention needs of the jurisdiction.
b. State and local health departments, including the HIV prevention and STD treatment programs.
c. State and local education agencies.
d. Other relevant governmental agencies (e.g., substance abuse, mental health, corrections).
e. Experts in epidemiology, behavioral and social sciences, program evaluation, and health planning.
f. Representatives of key non-governmental and governmental organizations providing HIV prevention and related services (e.g., STD, TB, substance abuse prevention and treatment, mental health services, HIV care and social services) to persons with or at risk for HIV infection.
g. Representatives of key non-governmental organizations relevant to, but who may not necessarily provide, HIV prevention services (e.g., representatives of business, labor, and faith communities).
5. The HIV prevention community planning process attempts to accommodate a reasonable number of representatives without becoming so large that it cannot effectively function. To assure needed input without becoming too large to function, HIV prevention community planning group(s) seek additional avenues for

obtaining input on community HIV prevention needs and priorities, such as holding well-publicized public meetings, conducting focus groups, and convening ad hoc panels. This is especially important for obtaining input relevant to marginalized populations that may be difficult to recruit and retain as members of the planning group (e.g., injecting drug users).

6. Nominations for membership are solicited through an open process and candidates are selected, based on criteria that has been established by the health department and the community planning group. The nomination and selection of new community planning group members occurs in a timely manner to avoid vacant slots or disruptions in planning. In addition, the recruitment process for membership in the HIV prevention community planning process is proactive to ensure that socioeconomically marginalized groups, and groups that are under served by existing HIV prevention programs, are represented.

7. All members of the HIV prevention community planning group(s) are offered a thorough orientation, as soon as possible after appointment. The orientation includes:

a. Understanding the roles and responsibilities outlined in this document,

b. Understanding the procedures and ground rules used in all deliberations and decision making,

c. Understanding the specific policies and procedures for decision-making, resolving disputes, and avoiding conflict of interests that are consistent with the principles of this guidance and are developed with input from all parties. These policies and procedures address:

1. Process for making decisions within the planning group (vote, consensus, etc.),

2. Conflict(s) of interest for members of the planning group(s),

3. Disputes within and among planning group(s),

4. Differences between the planning group(s) and the health department in the prioritization and implementation of programs/services, and

5. A process for resolving these disputes in a timely manner when they occur.

d. Understanding HIV prevention interventions and comprehensive prevention programs.

Orienting new members is an ongoing process that may include mentoring new members throughout the year.

8. Health departments assure that HIV prevention community planning group(s) have access to current information related to HIV prevention and analyses of the information, including potential implications for HIV prevention in the jurisdiction. Sources of information include evaluations of program activities, programmatic research, social and behavioral sciences, and other sources, especially as it relates to the at-risk population groups within a given community and the priority needs identified in the comprehensive plan.

9. Identification, interpretation, and prioritization of HIV prevention needs reflect the epidemiologic profile, needs assessment, and culturally relevant and linguistically appropriate information obtained from the communities to be served, particularly persons with or at risk for HIV infection.

10. Priority setting for specific HIV prevention strategies and interventions is based on specific criteria outlined in this document and each criterion should be formally considered by the HIV prevention community planning group(s) during priority-setting deliberations.

11. The HIV prevention community planning process produces a comprehensive HIV prevention plan, jointly developed by the health department and the HIV prevention community planning group(s), which includes specific, high priority HIV prevention strategies and interventions targeted to defined populations. Each health department's application for CDC funds addresses the plan's high priority elements that are most appropriately met by HIV prevention cooperative agreement funds. The comprehensive plan includes the essential elements listed in the section Essential Elements of a Comprehensive HIV Prevention Plan.

12. Because the plan is comprehensive, it should be distributed widely as a resource to guide programmatic activities and resources outside of those supported with CDC Federal HIV prevention funds.

13. The HIV prevention community planning process is evaluated to ensure that it is meeting the core objectives of community planning.

Steps in the HIV Prevention Community Planning Process

The steps of the HIV prevention community planning process follow:

1. Epidemiologic Profile: Assess the extent, distribution, and impact of HIV/AIDS and other STDs in defined populations in the community, as well as relevant risk behaviors. In defining at-risk populations, special attention should be paid to distinguishing behavioral, demographic, and racial/ethnic characteristics. This is the starting point for defining future HIV prevention needs in defined, targeted populations within the health department's jurisdiction. Other methods for segmenting audiences for prevention messages may also be used.

2. Needs Assessment/Resource Inventory: Assess existing community resources for HIV prevention and STD treatment to determine the community's capability to respond to the epidemic. These resources should include fiscal, personnel, and program resources, as well as support from public (Federal, State, county, municipal), private, and volunteer sources. This inventory should attempt to identify HIV prevention and STD treatment programs and activities according to the high-risk populations defined in the epidemiologic profile. The needs assessment/resource inventory should be based on a variety of sources (both qualitative and quantitative), should be collected using different assessment strategies (e.g., surveillance; survey; formative, process, and outcome evaluation of programs and services; outreach and focus group(s); public meetings), and should incorporate information from both providers and consumers of services. Techniques such as over sampling may be needed to collect valid information from certain at-risk populations.

3. Gap Analysis: Identify met and unmet HIV prevention and STD treatment needs within the high-risk populations defined in the epidemiologic profile and needs assessment/resource inventory. Findings from the needs assessment about high-risk populations (e.g., size of population, impact of HIV/AIDS, risk behaviors) and from the resource inventory about existing services should assist in identifying priority prevention needs. For example, if a large number of clients are turned away each day from an STD clinic that has a high HIV sero positivity rate, then there is clearly a gap in HIV prevention services.

4. Intervention Inventory: Identify potential strategies and interventions that can be used to prevent new HIV infections within the high-risk populations defined in the needs assessment;

5. Prioritization: Prioritize (rank order) HIV prevention needs in terms of: (1) High-risk populations; and (2) interventions and strategies for each high-risk population based on the following criteria:

a. Documented HIV prevention needs based on the current and projected impact of HIV/AIDS and other STDs in

defined populations in the health department's jurisdiction;

b. Outcome effectiveness of proposed strategies and interventions (either demonstrated or probable);

c. Available information on the relative costs and effectiveness of proposed strategies and interventions (either demonstrated or probable);

d. Sound scientific theory (e.g., behavior change, social change, and social marketing theories) when outcome effectiveness information is lacking;

e. Values, norms, and consumer preferences of the communities for whom the services are intended;

f. Availability of other governmental and non-governmental resources (including the private sector for HIV prevention); and

g. Other State and local determining factors.

Each criterion should be considered by the HIV prevention community planning group(s) during priority-setting deliberations. At a minimum, the community planning groups must provide a clear, concise, logical statement as to why each population and intervention given high priority was chosen.

6. Plan Development: Develop a comprehensive HIV prevention plan consistent with the high priority needs identified through the community planning process. The plan must contain all of the elements described in the following section, Essential Elements of a Comprehensive HIV Prevention Plan. CDC does not require a new plan each year. Plans may cover more than one year. However, project areas are expected periodically to review, revise, and refine the plans, as indicated by any new or enhanced surveillance data, intervention research, needs assessment, program policy, or technology. (See Definition of HIV Prevention Community Planning)

7. Evaluation: Evaluate the effectiveness of the planning process. Health departments should track and keep records on an ongoing basis in the following areas pertaining to the community planning process and development and implementation of the comprehensive HIV prevention plan:

a. Recruitment of community planning group members and representation of affected communities and areas of expertise on the community planning group (Community Planning Core Objectives 1 and 2).

b. Application of a needs assessment and an epidemiologic profile to determine target groups and HIV prevention strategies (Community Planning Core Objective 3).

c. Application of scientific knowledge in the selection and formulation of intervention strategies (Community Planning Core Objective 4).

d. Developing goals and measurable objectives for the planning process and monitoring progress on the objectives.

e. Assessing the cost of the process.

f. Assessing the extent to which resources allocated by the health department match the epidemiologic profile.

g. Assessment of the extent to which the final version of the Comprehensive HIV prevention plan is used in the health department's budget decisions and in the planning and development of HIV prevention program activities (Community Planning Core Objective 5).

8. Update: Use program evaluation data and updated or revised epidemiologic, needs assessment, intervention research, program policy, and technologic data to improve the next year's planning process and to update, as appropriate, the comprehensive plan. (See Definition of HIV Prevention Community Planning)

Essential Elements of a Comprehensive HIV Prevention Plan

The HIV prevention community planning process should produce a comprehensive HIV prevention plan, jointly developed by the health department and the HIV prevention community planning group(s), which includes specific, high priority HIV prevention strategies and interventions targeted to defined populations.

The necessary elements of a comprehensive HIV prevention plan include the following:

1. Epidemiologic Profile: An HIV/AIDS epidemiologic profile that outlines the epidemic in that jurisdiction. The profile includes data from a variety of sources (demographic and socioeconomic data, reported AIDS cases, reported HIV infections from areas with confidential reporting, HIV sero prevalence and sero incidence surveys/studies (where available], HIV risk behaviors, and surrogate markers for HIV risk behaviors, e.g., sexually transmitted disease (STD) and teen pregnancy rates and information on drug use.) Furthermore, the profile includes a narrative explanation of all data provided.

2. Needs Assessment/Resource Inventory/Gap Analysis: A description of met and unmet HIV prevention needs in target populations to be reached by primary HIV prevention interventions, and barriers in reaching populations. The description of target populations may include age group, gender, race/ethnicity, socioeconomic status, geographic area, sexual orientation, risk for HIV infection, primary language, and significant cultural factors.

3. Prioritization: The populations at high risk for HIV in rank order (i.e., prioritization), and the culturally and linguistically appropriate individual-, group-, and community-level strategies and interventions to reach each. These high-risk populations should include defined target populations whose sero status is unknown, negative, or positive. The strategies and interventions should include the interventions described in the section Essential Components of a Comprehensive HIV Prevention Program, as well as school-based programs, and other HIV prevention activities. Both existing and proposed interventions should be described. A clear, concise, logical statement of the reason each prioritized intervention was selected should be included.

4. Linkages: A description of how activities proposed in the comprehensive plan to prevent transmission or acquisition of HIV (primary prevention activities) are linked to activities to prevent or delay the onset of illness in persons with HIV infection (secondary prevention activities), to STD treatment, drug treatment, and Ryan White Comprehensive AIDS Resources Emergency (CARE) Act planning.

5. Goals: Short and long term goals for HIV prevention in defined populations being reached with defined interventions.

6. Surveillance and Research: A description of ongoing HIV prevention surveillance and research activities (e.g., epidemiologic and behavioral surveillance, research, and program evaluation activities), how these are linked to prevention program strategies in the plan, and any additional surveillance and research that is needed.

7. Coordination: A description of how governmental and non-governmental agencies will coordinate to provide comprehensive HIV prevention services and programs within the area for which the plan is developed.

8. Technical Assistance Needs Assessment and Plan: An HIV prevention technical assistance needs assessment identifying needs of the health department, community planning group(s), and community-based providers in the areas of program planning, implementation, and evaluation, and a plan of activities that addresses the technical assistance needs.

9. Community Planning Evaluation Plan: An evaluation plan for the HIV prevention planning process.

Letters of Concurrence/Nonconcurrence

Each health department, in its application, must include a letter of concurrence or nonconcurrence from every HIV prevention community planning group convened within the health department's jurisdiction. At a minimum, the letter(s) should be signed by the co-chairs on behalf of the group(s).

HIV prevention community planning group members should carefully review the comprehensive HIV prevention plan and the health department's entire application to CDC for Federal funds (including the proposed budget). Because the community planning process requires prioritization of HIV prevention needs and because prioritization directly corresponds to resource allocation, it is critical that the community planning group review the proposed allocation of resources in the health department's application (and, especially, to review expenditure levels in light of the epidemiologic profile). Community planning groups are not asked to review and comment on internal health department issues, such as salaries of individual health department staff, but instead to indicate:

1. The extent to which the health department and the HIV prevention community planning group(s) have successfully collaborated in developing, reviewing, or revising the comprehensive HIV prevention plan;

2. The extent to which the activities, programs, and services, for which the health department is requesting CDC funds, are responsive to the priorities in the comprehensive plan;

3. The process used for obtaining concurrence, including

a. A description of the process used for review of the application by the community planning group,

b. The time frame allotted for the review,

c. Who from the community planning group reviewed it (co-chairs, members, subcommittee chairs), and

d. The quality of the concurrence (e.g., without reservation, with minor concerns, with important concerns).

Letter(s) of concurrence may include reservations or a statement of concern/issues. The health department should address these reservations or concerns in an addendum to the HIV prevention application.

Letter(s) of nonconcurrence indicate that an HIV prevention community planning group disagrees with the program priorities identified in the health department's application. The letter should cite specific reasons for nonconcurrence. In instances of nonconcurrence and when a health department does not concur with the recommendations of the HIV prevention community planning group(s) and believes that public health would be better served by funding HIV prevention activities/services that are substantially different, the health department must submit a letter of justification in its application. CDC will assess and evaluate these justifications on a case-by-case basis and determine what action may be appropriate. A letter of nonconcurrence does not necessarily mean that the jurisdiction will lose any portion of its CDC funding. These actions can range from:

1. Obtaining more input/information regarding the situation;

2. Meeting with the health department and co-chairs;

3. Negotiating with the health department regarding the issues raised;

4. Recommending local mediation;

5. Approving the health department's application as is;

6. Requesting that a detailed plan of corrective action be developed to address the areas of concern and to be executed within a specified time frame;

7. Conducting an on-site comprehensive program assessment to identify and propose action steps to resolve areas of concern;

8. Conducting an on site program assessment focused on a specific area(s);

9. Developing a detailed technical assistance plan for the project area to help systematically address the situation; and

10. Placing conditions or restrictions on the award of funds pending a future submission by the applicant.

Roles and Responsibilities—Health Departments

State, local, and territorial health departments are responsible for the health of the populations in their jurisdictions. States have a broad responsibility in surveillance, prevention, overall planning, coordination, administration, fiscal management, and provision of essential public health services. The role of the health department in the community planning process is to:

1. Establish and maintain at least one HIV prevention community planning group that meets the principles described in the section Principles of HIV Prevention Community Planning. Health departments are required to determine how best to achieve and integrate statewide, regional, and local community planning within their jurisdictions. In those jurisdictions where CDC has direct cooperative agreements with both State and local health departments, health departments are expected to have systems and procedures in place to facilitate coordination and communication between the State and local health departments and their community planning groups.

2. Identify a health department employee, or a designated representative, to serve as co-chair of each HIV prevention community planning group in the project area; if State health departments implement more than one planning group within their jurisdiction, they may wish to designate local health department representatives as co-chairs of these planning groups.

3. Assure collaboration between HIV prevention community planning group(s) and other relevant planning efforts, particularly the process for allocating Titles I, II, and IIIb of the Ryan White Comprehensive AIDS Resources Emergency Act and the STD prevention program. Health departments may consider merging the HIV prevention community planning process with other planning bodies/processes already in place. If such mergers are undertaken, health departments must adhere to the principles of HIV prevention community planning, as contained in this document.

4. Provide an epidemiologic profile of the HIV prevention community planning group's jurisdiction to assist the group in establishing program priorities based on the extent, distribution, and impact of the HIV/AIDS epidemic. The profile should compile, analyze, and synthesize data from a variety of sources (demographic and socioeconomic data, reported AIDS cases, reported HIV infections from areas with confidential reporting, HIV sero prevalence and sero incidence surveys/studies [where available], HIV risk behaviors and surrogate markers for HIV risk behaviors, e.g., sexually transmitted disease (STD) and teen pregnancy rates and information on drug use.) Further, the profile should include a narrative explanation of all data provided and a summary of key findings.

5. Provide expertise and technical assistance, including ongoing training on HIV prevention planning, STD treatment and the interpretation of epidemiologic, behavioral, and evaluation data, to ensure that the planning process is comprehensive and evidence based.

6. Distribute widely the comprehensive HIV prevention plan and utilize existing networks to promote linkages and coordination among local

HIV prevention service providers, public health agencies, STD treatment clinics, community planning groups, and behavioral and social scientists who are either in the local area or who are familiar with local prevention needs, issues, and at-risk populations.

7. Develop an application for HIV prevention cooperative agreement funds, based on the comprehensive HIV prevention plan(s) developed through the HIV prevention community planning process, seek review of the application and letter(s) of concurrence/nonconcurrence from the community planning group(s), and allocate resources based on the plan's priorities.

8. Operationalize and implement HIV prevention services/activities outlined in the comprehensive plan including awarding and administering HIV prevention funds.

9. Administer HIV prevention funds awarded under the cooperative agreement, ensuring that funds are awarded to contractors within 90 days of the time that the health department receives notice of grant award from CDC. Monitor contractor activities and document contractor compliance.

10. Ensure that technical assistance is provided to assist health departments and community-based providers in the areas of program planning, implementation, and evaluation as identified in the comprehensive HIV prevention plan. Health departments should meet these needs by drawing on expertise from a variety of sources (e.g., the CDC-supported TA network, health departments, academia, professional and other national organizations, and non-governmental organizations).

11. Administer and coordinate public funds from a variety of sources, including Federal, State, and local agencies, to prevent HIV transmission and reduce associated morbidity and mortality.

12. Ensure program effectiveness through specific program monitoring and evaluation activities. This may include conducting or contracting for process and outcome evaluation studies, providing technical assistance in evaluation, or ensuring the provision of evaluation technical assistance to funding recipients.

13. Provide periodic feedback to the community planning group on the successes and barriers encountered in implementing HIV prevention interventions.

HIV Prevention Community Planning Groups

The role of the planning group(s) in the HIV prevention community planning process is to:

1. Elect a community co-chair to work with the co-chair designated by the health department.

2. Determine the technical assistance needs of the community planning group to enable them to execute an effective community planning process.

3. Carefully review available epidemiologic, evaluation, behavioral and social science, cost and cost-effectiveness, and needs assessment data and other information required to prioritize HIV prevention needs.

4. Identify unmet HIV prevention needs within defined populations.

5. Prioritize HIV prevention needs by target populations and propose high priority strategies and interventions.

6. Identify the technical assistance needs of community-based providers in the areas of planning, implementing, and evaluating prevention interventions.

7. Assess how well the priorities outlined in the plan are represented in the health department's application to CDC for Federal HIV prevention funds.

8. Community planning groups must focus primarily on the tasks of planning, as described above. Whether or not community planning groups take on additional tasks beyond those described in this document is determined locally by the health department and the community planning group (see Definition of HIV Prevention Community Planning). The planning process should be flexible, taking a long-term approach and negotiating meaningful tasks for the planning group that contribute and enhance the comprehensive plan. The important, overall goal of HIV prevention community planning is to have in place a comprehensive HIV prevention plan that is current, evidence based, adaptable as new information becomes available, tailored to the specific needs of each jurisdiction, and widely distributed in an effort to provide a road map for prevention that can be used by all prevention providers in the jurisdiction.

Shared Responsibilities Between Health Departments and HIV Prevention Community Planning Groups

Together, the health department and the community planning group should:

1. Develop and implement policies and procedures that clearly address and outline systems for regularly re-examining:

a. Planning group composition, selection, appointment, and terms of office to ensure that all planning group(s) reflect, as much as possible, the population characteristics of the epidemic in State and local jurisdictions in terms of age, race/ethnicity, gender, sexual orientation, geographic distribution, and risk for HIV infection;

b. Roles and responsibilities of the community planning group, its members, and its various components (e.g., subcommittees, workgroups, regional groups, etc.);

c. Methods for reaching decisions; attendance at meetings; resolution of disputes identified in planning deliberations; and resolution of conflict(s) of interest for members of the planning group(s).

2. Develop and apply criteria for selecting the individual members of the HIV prevention community planning group(s) within the jurisdiction. Special emphasis should be placed on procedures for identifying representatives of socioeconomically marginalized groups and groups that are under served by existing HIV prevention programs.

3. Determine the most effective mechanisms for input into the HIV prevention community planning process. The process must be structured in such a way that it incorporates and addresses needs and priorities identified at the community level (i.e., the level closest to the problem or need to be addressed).

4. Provide a thorough orientation for all new members, as soon as possible after appointment. New members should understand:

a. The roles, responsibilities, and principles outlined in this document;

b. The procedures and ground rules used in all deliberations and decision making; and

c. The specific policies and procedures for resolving disputes and avoiding conflict of interests that are consistent with the principles of this guidance and are developed with input from all parties.

5. Determine the distribution of planning funds to (a) support planning group meetings, public meetings, and other means for obtaining community input; (b) facilitate involvement of all participants in the planning process, particularly those persons with and at risk for HIV infection; (c) support capacity development for inclusion, representation, and parity of community representatives and for other planning group members to participate effectively in the process; (d) provide technical assistance to health departments and community planning groups by outside experts; (e) support planning infrastructure for the HIV prevention community planning process; (f) collect, analyze, and disseminate relevant data; and (g) evaluate the community planning process.

6. Consider what additional data are needed for decision-making about priority needs, and propose methods for obtaining the data.

7. Develop goals for HIV prevention strategies and interventions in defined target populations.

8. Develop, update annually, and disseminate the comprehensive HIV prevention plan.

9. If there are multiple community planning groups in the jurisdiction, integrate multiple HIV community prevention plans into a project-wide comprehensive HIV prevention plan.

10. Foster integration of the HIV prevention community planning process with other relevant planning efforts. Consider how the following are addressed within the Comprehensive HIV prevention plan:

a. HIV prevention interventions;

b. Early intervention, primary care, and other HIV-related services;

c. STD, TB, and substance abuse prevention and treatment;

d. Women's health services;

e. Mental health services; and

f. Other public health needs.

Centers for Disease Control and Prevention

The role of CDC in the HIV prevention community planning process is to:

1. Provide leadership in the national design, implementation, and evaluation of HIV prevention community planning.

2. Collaborate with health departments, community planning groups, national organizations, Federal agencies, and academic institutions to ensure the provision of technical/program assistance and training for the HIV prevention community planning process. The CDC project officer is key to this collaboration. He/she works with the health department and the community co-chairs to provide technical/program assistance for the community planning process, including discussing roles and responsibilities of community planning participants, disseminating CDC documents, and responding to direct inquiries to ensure consistent interpretation of the guidance.

3. Provide technical/program assistance through a variety of mechanisms to help recipients understand how to (a) ensure parity, inclusion, and representation of all members throughout the community planning process; (b) analyze epidemiologic, behavioral and other relevant data to assess the impact and extent of the HIV/AIDS epidemic in defined populations; (c) conduct needs assessments and prioritize unmet HIV prevention needs; (d) identify and evaluate effective and cost-effective HIV prevention activities for these priority populations; (e) provide access to needed behavioral and social science expertise; (f) identify and manage dispute and conflict of interest issues; and (g) evaluate the community planning process.

4. Require that application content submitted by HIV prevention cooperative agreement recipients for HIV prevention community planning funds is in accordance with the principles and the roles and responsibilities outlined in this guidance.

5. Monitor the HIV prevention community planning process, especially around the five core objectives.

6. Require as a condition for award of cooperative agreement funds that recipients' applications are in accordance with the comprehensive plan developed through the HIV prevention community planning process or include an acceptable letter of justification.

7. Identify the essential components of a comprehensive HIV prevention program.

8. Collaborate with health departments in evaluating HIV prevention programs.

9. Collaborate with other Federal agencies (particularly the National Institutes of Health, the Substance Abuse and Mental Health Services Administration, and the Health Resources and Services Administration) in promoting the transfer of new information and emerging prevention technologies or approaches (i.e., epidemiologic, biomedical, operational, behavioral, or evaluative) to health departments and other prevention partners, including non-governmental organizations.

10. Compile annually a report on the projected expenditures of HIV prevention cooperative agreement funds by specific strategies and interventions. Collaborate with other prevention partners in improving and integrating fiscal tracking systems.

Accountability

CDC is committed to the concept of HIV prevention community planning as outlined in this guidance. In summary, CDC expects that:

1. Health departments will support and facilitate the community planning process;

2. Community planning groups will develop plans in which they have prioritized (rank ordered) HIV prevention needs, including populations and interventions;

3. Health departments will reflect these priorities in their applications to CDC and implement effective HIV prevention programs based on the comprehensive HIV prevention plan; and

4. Community planning groups will review the entire application for their jurisdiction, including the budget, prior to writing letters of concurrence and nonconcurrence.

CDC will continue to conduct external reviews of health department HIV prevention cooperative agreement applications and comprehensive HIV prevention plans to monitor the progress health departments and community planning groups are making in meeting these expectations. These reviews will focus on whether or not:

1. A jurisdiction's planning process is in compliance with this guidance and the five core objectives;

2. Priority populations and recommended interventions identified in the comprehensive HIV prevention plan are consistent with the epidemiologic profile, needs assessment, and behavioral/social science data presented in the plan;

3. Proposed prevention program objectives, activities, and budget in the application are consistent with the comprehensive HIV prevention plan; and

4. Any discrepancies noted are adequately justified.

CDC will review the recommendations provided by the External Reviewers and consider them when making decisions concerning issues such as funding restrictions and conditions, as well as detailed plans of technical assistance.

[FR Doc. 98–13307 Filed 5–18–98; 8:45 am]

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Federal Register

Tuesday
May 19, 1998

Part III

Department of Education

Safe and Drug-Free Schools and Communities National Program—Federal Activities Grants Program; Notice

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.184G & J]

Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Priorities and Selection Criteria for Fiscal Year 1998.

SUMMARY: The Secretary announces proposed priorities and selection criteria for fiscal year (FY) 1998 under the Safe and Drug-Free Schools and Communities (SDFSC) National Programs Federal Activities Grants Program. The Secretary takes this action to focus Federal financial assistance on identified national needs to promote the creation of safe and orderly learning environments for all students and to encourage the development of systems to collect data related to youth drug use and violent behavior.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 603, Portals Building, 1250 Maryland Avenue, SW, Washington, DC, between the hours of 9:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

DATES: Comments must be received by the Department on or before June 18, 1998.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Ethel Jackson, U.S. Department of Education, 600 Maryland Avenue, SW., Suite 603, Portals Building, Washington, DC 20202–6123. Comments may also be sent through the Internet to: comments@ed.gov. You must include the term ''Federal Activities Grant Program'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Ethel Jackson, Safe and Drug-Free Schools Programs, U.S. Department of Education, 600 Independence Avenue, SW., Room 603, Portals, Washington, DC 20202–6123. Telephone: (202) 260–3954. Individuals who use a tele-communications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Note: This notice of proposed priorities and selection criteria does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

SUPPLEMENTARY INFORMATION:

This notice contains two proposed priorities and selection criteria for fiscal year 1998. Under absolute priority one (CFDA 84.184G, State and Local Educational Agency Drug and Violence Prevention Data Collection), the Secretary may make grant awards for up to 24 months. Under absolute priority number two (CFDA 84.184J, Model Demonstration Program), the Secretary may award cooperative agreements for up to 60 months. Cooperative agreements funded through this priority will serve as national demonstration sites to test strategies, assess effectiveness, and make a major contribution to the development and dissemination of models and components of models which can be used by school districts and other youth-serving agencies nationwide.

Priorities

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this competition only applications that meet one of these absolute priorities.

Absolute Priority 1 and Selection Criteria—State and Local Educational Agency Drug and Violence Prevention Data Collection (CFDA 84.184G)

Under this priority, applicants must propose projects that—

(1) Develop, improve, expand, or enhance the collection of data related to youth drug use and violence; and

(2) Develop and implement processes to ensure that high-quality data are used to form policy, assess needs, select interventions, and assess the success of drug and violence prevention activities funded under the SDFSC State Grants Program. Projects may be State-wide in scope or limited to an individual local educational agency, or a consortium of local educational agencies, with a student enrollment that exceeds 30,000.

Projects must address drug and violence prevention data for students in general, not just for a sub-set of the population (e.g., non-English speaking students or hearing-impaired students). To be considered for funding under this competition, a project must include—

(1) Concrete plans, with timelines, that detail how the results of new or improved data collection efforts will be incorporated into State and local educational agency efforts to assess needs, select interventions, and assess success of drug and violence prevention efforts;

(2) Outcome-based performance indicators that will be used to judge the success of the project;

(3) A description of how efforts proposed as part of the project have been coordinated with and will not duplicate data collection efforts being implemented by other State or local agencies; and

(4) If the applicant is other than a State or local educational agency, evidence of commitment from the State educational agency (for State-wide projects) or from the superintendent of schools (for local projects).

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate proposals submitted under this priority.

The maximum score for all of the criteria in this section is 100 points.

The maximum score for each criterion is indicated in parentheses with the criterion.

(b) *The criteria.*—

1. *Need for project.* (15 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

2. *Significance.* (25 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The significance of the problem or issues to be addressed by the proposed project.

(b) The likelihood that the proposed project will result in system change or improvement.

(c) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

3. *Quality of the project design.* (25 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(c) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State and Federal resources.

4. *Adequacy of resources.* (15 points)

In determining the adequacy of resources for the proposed projects, the following factors are considered:

(a) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(b) The potential for the incorporation of project purposes, activities or benefits into the ongoing program of the agency or organization at the end of Federal funding.

5. *Quality of the management plan* (10 points)

In determining the quality of the management plan for the proposed project, the following factor is considered:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, time lines, and milestone for accomplishing project tasks.

6. *Quality of the project evaluation.* (10 points)

In determining the quality of the evaluation to be conducted for the proposed project, the following factor is considered:

(a) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Absolute Priority #2 and Selection Criteria—Model Demonstration Programs to Create Safe and Orderly Learning Environments in Schools (CFDA 84.184J)

Projects proposed under this priority are expected to comprehensively address multiple factors that predispose youth to drug use and violent behavior. Therefore, projects will not be funded for: (a) basic support of existing programs; (b) replication of a single program of demonstrated effectiveness, or (c) less than $500,000 or more than $1 million.

Projects supported under this priority will be funded for implementation in one site for three years and for replication in additional sites for two years. Projects will be reviewed during the third year to examine, among other factors, the degree to which the evaluation findings at the original site are promising, and the quality of the evaluation design proposed to test the model at other sites during years four and five. Projects which fail to demonstrate effectiveness at the original site will not be funded to test the model's replication in other sites.

Under this priority, applicants must propose projects that:

(A) Develop and implement a model with specific components or strategies that are based on theory, research, or evaluation data;

(B) Identify outcomes intended to result in behavioral change in youth served and other indicators of the effectiveness of the model (e.g. improved bonding to school and to the community, reductions in disciplinary referrals, absence of firearms and other weapons in schools, acquisition of pro-social skills, and reductions in alcohol, tobacco, and other drug use by the target population);

(C) Evaluate the model by using multiple measures to determine the effectiveness of the model and its components or strategies; and

(D) Produce detailed documentation of procedures and materials that would enable others to replicate the model as implemented at the original site.

Applicants must provide the following : (1) recent and historical data on drug use by youth; (2) data that describes patterns of violence and disruptive acts in schools; (3) rates of referral to juvenile justice authorities for bringing weapons to school, drug use or possession and violent criminal acts; (4) evidence of gang and violence problems in the target community, and (5) demographic information for the geographic area in which the school is located.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate proposals submitted under this priority.

The maximum score for all of the criteria in this section is 100 points.

(2) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.—*

1. *Significance* (30 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(b) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(c) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(2) *Quality of the project design* (25 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(c) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(d) The quality of the proposed demonstration design and procedures for documenting project activities and results;

(e) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

3. *Adequacy of resources* (10 points)

In determining the adequacy of resources for the proposed project, the following factors are considered:

(a) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(b) The extent to which the costs are reasonable in relation to the objectives, design and potential significance of the proposed project.

4. *Quality of the management plan* (10 points)

In determining the quality of the management plan, the following factors are considered:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(b) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

5. *Quality of the project evaluation* (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of the evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the proposed project.

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7131.

Dated: May 14, 1998.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

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Federal Register

Tuesday
May 19, 1998

Part IV

The President

Executive Order 13083—Federalism

Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Federal Register
Vol. 63, No. 96
Tuesday, May 19, 1998

Presidential Documents

Title 3—

The President

Executive Order 13083 of May 14, 1998

Federalism

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to guarantee the division of governmental responsibilities, embodied in the Constitution, between the Federal Government and the States that was intended by the Framers and application of those principles by the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) ''State'' or ''States'' refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) ''Policies that have federalism implications'' refers to Federal regulations, proposed legislation, and other policy statements or actions that have substantial direct effects on the States or on the relationship, or the distribution of power and responsibilities, between the Federal Government and the States.

(c) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

Sec. 2. *Fundamental Federalism Principles.* In formulating and implementing policies that have federalism implications, agencies shall be guided by the following fundamental federalism principles:

(a) The structure of government established by the Constitution is premised upon a system of checks and balances.

(b) The Constitution created a Federal Government of supreme, but limited, powers. The sovereign powers not granted to the Federal Government are reserved to the people or to the States, unless prohibited to the States by the Constitution.

(c) Federalism reflects the principle that dividing power between the Federal Government and the States serves to protect individual liberty. Preserving State authority provides an essential balance to the power of the Federal Government, while preserving the supremacy of Federal law provides an essential balance to the power of the States.

(d) The people of the States are at liberty, subject only to the limitations in the Constitution itself or in Federal law, to define the moral, political, and legal character of their lives.

(e) Our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. States and local governments are often uniquely situated to discern the sentiments of the people and to govern accordingly.

(f) Effective public policy is often achieved when there is competition among the several States in the fashioning of different approaches to public policy issues. The search for enlightened public policy is often furthered when individual States and local governments are free to experiment with a variety of approaches to public issues. Uniform, national approaches to

public policy problems can inhibit the creation of effective solutions to those problems.

(g) Policies of the Federal Government should recognize the responsibility of—and should encourage opportunities for—States, local governments, private associations, neighborhoods, families, and individuals to achieve personal, social, environmental, and economic objectives through cooperative effort.

Sec. 3. *Federalism Policymaking Criteria.* In addition to adhering to the fundamental federalism principles set forth in section 2 of this order, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There should be strict adherence to constitutional principles. Agencies should closely examine the constitutional and statutory authority supporting any Federal action that would limit the policymaking discretion of States and local governments, and should carefully assess the necessity for such action.

(b) Agencies may limit the policymaking discretion of States and local governments only after determining that there is constitutional and legal authority for the action.

(c) With respect to Federal statutes and regulations administered by States and local governments, the Federal Government should grant States and local governments the maximum administrative discretion possible. Any Federal oversight of such State and local administration should not unnecessarily intrude on State and local discretion.

(d) It is important to recognize the distinction between matters of national or multi-state scope (which may justify Federal action) and matters that are merely common to the States (which may not justify Federal action because individual States, acting individually or together, may effectively deal with them). Matters of national or multi-state scope that justify Federal action may arise in a variety of circumstances, including:

(1) When the matter to be addressed by Federal action occurs interstate as opposed to being contained within one State's boundaries.

(2) When the source of the matter to be addressed occurs in a State different from the State (or States) where a significant amount of the harm occurs.

(3) When there is a need for uniform national standards.

(4) When decentralization increases the costs of government thus imposing additional burdens on the taxpayer.

(5) When States have not adequately protected individual rights and liberties.

(6) When States would be reluctant to impose necessary regulations because of fears that regulated business activity will relocate to other States.

(7) When placing regulatory authority at the State or local level would undermine regulatory goals because high costs or demands for specialized expertise will effectively place the regulatory matter beyond the resources of State authorities.

(8) When the matter relates to Federally owned or managed property or natural resources, trust obligations, or international obligations.

(9) When the matter to be regulated significantly or uniquely affects Indian tribal governments.

Sec. 4. *Consultation.* (a) Each agency shall have an effective process to permit elected officials and other representatives of State and local governments to provide meaningful and timely input in the development of regulatory policies that have federalism implications.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that has federalism implica-

tions, and that imposes substantial direct compliance costs on States and local governments, unless:

(1) funds necessary to pay the direct costs incurred by the State or local government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected States and local governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by States or local governments.

Sec. 5. *Increasing Flexibility for State and Local Waivers.* (a) Agencies shall review the processes under which States and local governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State or local government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State or local level in cases in which the proposed waiver is consistent with applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 6. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

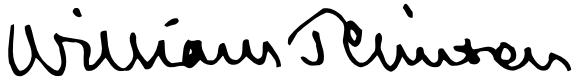
Sec. 7. *General Provisions.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (''Regulatory Planning and Review''), Executive Order 12988 (''Civil Justice Reform''), and OMB Circular A–19.

(c) Executive Order 12612 of October 26, 1987, and Executive Order 12875 of October 26, 1993, are revoked.

(d) The consultation and waiver provisions in sections 4 and 5 of this order shall complement the Executive order entitled, ''Consultation and Coordination with Indian Tribal Governments,'' being issued on this day.

(e) This order shall be effective 90 days after the date of this order.



THE WHITE HOUSE,
May 14, 1998.

[FR Doc. 98–13552
Filed 5–19–98; 11:24 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13084 of May 14, 1998

Consultation and Coordination With Indian Tribal Governments

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities; to reduce the imposition of unfunded mandates upon Indian tribal governments; and to streamline the application process for and increase the availability of waivers to Indian tribal governments; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) ''State'' or ''States'' refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

(b) ''Indian tribe'' means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) ''Agency'' means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

Sec. 2. *Policymaking Criteria.* In formulating policies significantly or uniquely affecting Indian tribal governments, agencies shall be guided, to the extent permitted by law, by principles of respect for Indian tribal self-government and sovereignty, for tribal treaty and other rights, and for responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

Sec. 3. *Consultation.* (a) Each agency shall have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that is not required by statute, that significantly or uniquely affects the communities of the Indian tribal governments, and that imposes substantial direct compliance costs on such communities, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected Indian tribal governments, a summary of the nature of their concerns, and the agency's position supporting the need to issue the regulation; and

(B) makes available to the Director of the Office of Management and Budget any written communications submitted to the agency by such Indian tribal governments.

Sec. 4. *Increasing Flexibility for Indian Tribal Waivers.* (a) Agencies shall review the processes under which Indian tribal governments apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. The agency shall provide the applicant with timely written notice of the decision and, if the application for a waiver is not granted, the reasons for such denial.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 5. *Cooperation in developing regulations.* On issues relating to tribal self-government, trust resources, or treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

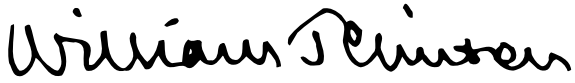
Sec. 6. *Independent agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 7. *General provisions.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (''Regulatory Planning and Review''), Executive Order 12988 (''Civil Justice Reform''), OMB Circular A–19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(c) This order shall complement the consultation and waiver provisions in sections 4 and 5 of the Executive order, entitled ''Federalism,'' being issued on this day.

(d) This order shall be effective 90 days after the date of this order.



THE WHITE HOUSE,
May 14, 1998.

[FR Doc. 98–13553
Filed 5–18–98; 11:24 am]
Billing code 3195–01–P

Federal Register

Tuesday
May 19, 1998

Part V

The President

Notice of May 18, 1998—Continuation of Emergency With Respect to Burma

Federal Register
Vol. 63, No. 96
Tuesday, May 19, 1998

Presidential Documents

Title 3—

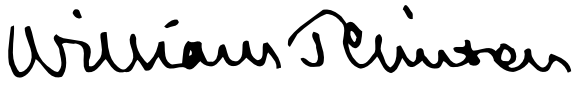
The President

Notice of May 18, 1998

Continuation of Emergency With Respect to Burma

On May 20, 1997, I issued Executive Order 13047, effective at 12:01 a.m. eastern daylight time on May 21, 1997, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons, contained in that section. I also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International emergency Economic Powers Act (50 U.S.C. 1701-1706).

The national emergency declared on May 20, 1997, must continue beyond May 20, 1998, as long as the Government of Burma continues its policies of committing large-scale repression of the democratic opposition in Burma. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Burma. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
May 18, 1998.

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Federal Register

Vol. 63, No. 96

Tuesday, May 19, 1998

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 19, 1998

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Petroleum refineries, new and existing; published 3-20-98

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Kansas; published 3-20-98

Air quality implementation plans; approval and promulgation; various States:
- California; published 3-20-98

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Arizona et al.; published 5-19-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- AlliedSignal Inc.; published 5-19-98
- General Dynamics; published 4-14-98
- Saab; published 4-14-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—
- Michigan et al.; comments due by 5-26-98; published 4-23-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison—
  - State and area classifications; comments due by 5-26-98; published 3-25-98

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Fees:
- Official inspection and weighing services; comments due by 5-26-98; published 3-27-98

Official/unofficial weighing services; comments due by 5-29-98; published 3-30-98

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans with Disabilities Act; implementation:
- Accessibility guidelines for transportation vehicles—
  - Over-the-road buses; comments due by 5-26-98; published 3-25-98

DEFENSE DEPARTMENT

Acquisition regulations:
- Comprehensive subcontracting plans; comments due by 5-26-98; published 3-26-98
- Defense contracts; list of firms not eligible; comments due by 5-26-98; published 3-27-98
- Spanish laws and insurance compliance; comments due by 5-26-98; published 3-27-98

ENERGY DEPARTMENT

Sales regulation:
- Strategic petroleum reserve; standard sales provisions; comments due by 5-26-98; published 4-8-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Portland cement manufacturing industry; comments due by 5-26-98; published 3-24-98

Air pollution; hazardous; national emission standards:
- Aerospace manufacturing and rework facilities; comments due by 5-26-98; published 3-27-98

Air programs:
- Fuels and fuel additives—
  - Diesel fuel sulfur requirement; Alaska exemption petition; comments due by 5-28-98; published 4-28-98

Air programs; approval and promulgation; State plans for designated facilitiesand pollutants:
- Missouri; comments due by 5-26-98; published 4-24-98

Air quality implementation plans; approval and promulgation; various States:
- Connecticut; comments due by 5-26-98; published 4-24-98
- Georgia; comments due by 5-29-98; published 4-29-98
- Wisconsin; comments due by 5-28-98; published 4-28-98

Air quality planning purposes; designation of areas:
- Iowa; comments due by 5-26-98; published 4-23-98

Clean Air Act:
- Clean fuel fleet program; State implementation plans; comments due by 5-26-98; published 4-23-98
- Federal and State operating permits programs; draft rules and accompanying information availability; comments due by 5-26-98; published 4-28-98

CleanAir Act:
- Clean fuel fleet program; State implementation plans; comments due by 5-26-98; published 4-23-98

Hazardous waste program authorizations:
- New Mexico; comments due by 5-28-98; published 4-28-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Imidacloprid; comments due by 5-26-98; published 3-25-98

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 5-26-98; published 4-24-98
  - National priorities list update; comments due by 5-28-98; published 4-28-98

Toxic substances:
- Testing requirements—
  - Diethanolamine; comments due by 5-29-98; published 3-30-98
  - Ethylene glycol; comments due by 5-29-98; published 3-30-98
  - Hydrogen fluoride; comments due by 5-26-98; published 3-27-98
  - Maleic anhydride; comments due by 5-26-98; published 3-27-98
  - Phthalic anhydride; comments due by 5-26-98; published 3-27-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Alternative incentive based regulation; policies and rules; reclassification of Comsat Corp. as nondominant carrier; comments due by 5-26-98; published 5-11-98

FEDERAL LABOR RELATIONS AUTHORITY

Negotiability petitions processing; miscellaneous and general requirements; comments due by 5-29-98; published 4-20-98

FEDERAL RESERVE SYSTEM

Equal credit opportunity (Regulation B):
- Technological revisions; comments due by 5-29-98; published 3-12-98

Home mortgage disclosure (Regulation C):
- Preapprovals reporting, refinancing and home improvement loans reporting, purchased loans, temporary financing, and other issues; regulatory review; comments due by 5-29-98; published 3-12-98

FEDERAL TRADE COMMISSION

Industry guides:
- Decorative wall paneling industry; comments due by 5-26-98; published 3-27-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Color additives:
- D&C Violet No. 2; comments due by 5-26-98; published 4-23-98

Food additives:
- Polymers—
  - Poly(p-oxyphenylene p-oxyphenylene p-carboxyphenylene; comments due by 5-26-98; published 4-24-98

Food for human consumption:
- Beverages—
  - Juice and juice products safety; preliminary regulatory impact analysis and initial